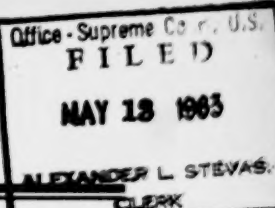


No. 82-1127



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1982

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Petitioner,*

v.

ELIZABETH HALL, *et al.*,  
*Respondents.*

On Writ Of Certiorari To The Supreme Court Of Texas

**JOINT APPENDIX**

Of Counsel:

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CYNTHIA J. LARSEN  
JAMES E. INGRAM  
BARRY A. CHASNOFF

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DISTRICT COURT, HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

(Nos. 1,098,919; 1,098,920; 1,098,921 consolidated with Case No. 1,087,423 by Order of the Court on May 12, 1980)

No. 1087423

Filed: 8/6/76

ELIZABETH HALL, *et al.*,

Plaintiffs,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*,

Defendants.

DOCKET ENTRIES

Grant resetting of Motion for Hearing on Special Appearance	10/19/77
Hearing on Special Appearance and Hearing Continued until 3/6/78	2/28/78
Dictate letter overruling Motion for Special Appearance	3/28/78
Sign Order of Consolidation	5/12/80
Evidence	5/28/80
Evidence	5/29/80
Evidence; Summation; Jury Verdict	6/3/80
Motion for Judgment N.O.V. overruled; Enter Judgment	7/7/80



DISTRICT COURT, HARRIS COUNTY, TEXAS  
189TH JUDICIAL DISTRICT

No. 1098919

Filed:10/25/76

NAOMI LEWALLEN, *et al.*,

Plaintiffs,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*,

Defendants.

DOCKET ENTRIES

Defendant Helicol's Special Appearance and Plea  
to Jurisdiction of this Court is Overruled and De-  
nied

11/1/78

Order signed and entered

11/2/78

Transferred to 190th District Court

5/7/80

DISTRICT COURT, HARRIS COUNTY, TEXAS  
215TH JUDICIAL CIRCUIT

No. 1098920

Filed:10/25/76

HARVE PORTON, *et al.*,

Plaintiffs,

v.

WILLIAMS-SEDCO-HORN, *et al.*,

Defendants.

DOCKET ENTRIES

Hearing on Special Appearance of Helicol. Trans-  
cript of hearing in 190th Court on 2/28/78. Sub-  
mitted as evidence according to Stipulation of all  
Parties. Evidence, Pleadings and Briefs con-  
sidered and Special Appearance overruled.

11/13/78

Transferred to 190th District Court

5/7/80

DISTRICT COURT, HARRIS COUNTY, TEXAS  
164TH JUDICIAL DISTRICT

No. 1098921

Filed:9/8/77

LOUISE C. MOORE, *et al.*

Plaintiffs,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*,  
Defendants.

## DOCKET ENTRIES

Transferred to 190th District Court

5/12/80

COURT OF CIVIL APPEALS.  
FIRST SUPREME JUDICIAL DISTRICT  
OF TEXAS AT HOUSTON

No. 17882

Filed:11/21/80

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Appellant,*

v.

ELIZABETH HALL, *et al.*,*Appellee.*

## DOCKET ENTRIES

Submitted on briefs and oral argument	1/8/81
Reversed and Dismissed	1/22/81
Motion for Rehearing filed by Appellee	2/17/81
Motion for Rehearing overruled	2/26/81
Motion for Writ of Error filed by Appellees	3/26/81
Writ of Error Granted by Supreme Court C-243	5/13/81

SUPREME COURT OF TEXAS  
190TH JUDICIAL DISTRICT

No. C243

Filed: 5/13/81

ELIZABETH HALL, *et al.*,*Petitioner,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A., ("HELICOL")  
*Respondent.*

## DOCKET ENTRIES

Cause submitted	6/10/81
Judgment of the Court of Civil Appeals affirmed	2/24/82
Petitioners' Motion for Rehearing	3/10/82
Judgment of the Court of Civil Appeals reversed on Motion for Rehearing	7/21/82
Respondent's Motion for Rehearing	8/15/82
Respondent's Motion for Rehearing overruled	10/6/82
Mandate Issued	10/8/82

IN THE  
DISTRICT COURT OF HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

No. 1,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

**PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW comes ELIZABETH HALL, the widow and personal representative of the Estate of DEAN C. HALL, individually and as Next Friend of her minor child, DELBERT D. HALL, and come also LYDELL C. HALL, PAMELA HALL TOLER, JOHN H. HALL, ZELLA BROWN and RALPH A. HALL, plaintiffs in the above styled and numbered cause, still complaining of WILLIAMS-SEDCO-HORN, a joint venture, AVIANCA AIRLINES, and its wholly owned subsidiary, HELICOL, and BELL HELICOPTER COMPANY, a division of TEXTRON, INC., hereinafter called defendants, and for cause of action and by way of amended petition would respectfully show unto the Court and Jury as follows:

**I.**

Defendant, Williams-Sedco-Horn, a joint venture, has been served with citation herein. Defendants, Avianca Airlines, and its wholly owned subsidiary, Helicol, have an agent upon whom service of citation may be had at 2990 Richmond, in Houston, Harris County, Texas. Defendant, Bell Helicopter Company, a division of Textron, Inc., has an agent C T Corporation System, upon whom service of citation may be had at Republic National Bank Building, in Dallas, Dallas County, Texas.

**II.**

It has become necessary to institute these legal proceedings because of the tragic death of Dean C. Hall, the father, hus-

band and son of plaintiffs herein, whose death occurred on January 26, 1976 in the Country of Peru.

Dean C. Hall, the deceased, was in Peru as a result of an agreement with his longtime employer, Williams Brothers (Overseas Company) Ltd.

The defendant joint venturer, Williams-Sedco-Horn, had contracted with the defendant, Helicol, the wholly owned subsidiary of the defendant, Avianca Airlines, to furnish helicopter transportation services. In connection with this contract, a helicopter manufactured and marketed by the defendant, Bell Helicopter Company, a division of Textron, Inc., was placed at the disposal of defendant, Williams-Sedco-Horn, the joint venturer.

On January 26, 1976 the joint venturer, Williams-Sedco-Horn, dispatched this helicopter, a Bell Model 205-A1, to transport certain persons and equipment. Among the passengers was Dean C. Hall. As the helicopter was descending it crashed and burned. All of the occupants, including Mr. Hall, were tragically killed.

The joint venturer, Williams-Sedco-Horn, had a continuing and non-delegable legal duty to provide Dean C. Hall with a reasonably safe place to work, including reasonably safe transportation. Such duty was breached and was a proximate cause of the death of Mr. Hall. The defendants, Avianca Airlines and Williams-Sedco-Horn, are each responsible for the negligence of Helicol. Avianca Airlines is responsible because Helicol not only is a wholly owned subsidiary but is a mere instrumentality of Avianca. Williams-Sedco-Horn is responsible because it cannot delegate its responsibility to provide reasonably safe transportation and a reasonably safe place to work to any other party. Helicol is, of course, legally responsible for its own negligence through its pilot employee. The crash of the helicopter and the death of Dean C. Hall was proximately caused by the joint and several negligence of the defendants, Williams-Sedco-Horn, Avianca Airlines and Helicol, and each is jointly

and severally responsible to the plaintiffs herein for the damages occasioned thereby.

A contributing, producing cause of this helicopter crash may well have been the failure of the helicopter's left elevator. If such be determined as a fact, then the defendant, Bell Helicopter Company, a division of Textron, Inc., is accountable and liable to plaintiffs in strict tort liability for the manufacture, distribution and sale of a dangerously defective product.

### III.

This action is brought under Article 4671, et. seq. of the Revised Civil Statutes of the State of Texas, commonly known as the Wrongful Death Act and under the Survival Act. Elizabeth Hall is the surviving widow of Dean C. Hall; Lydell C. Hall, Pamela Hall Toler, John H. Hall and Delbert D. Hall are the surviving children; and Zella Brown and Ralph A. Hall are the surviving parents.

Dean C. Hall was 50 years of age at the time of his death with a life expectancy of 23.6 years, according to the United States Life Tables, 1973, Volume II, Section 5. He was earning and capable of earning \$3,000 monthly. He was in good physical condition at the time of his tragic death. He was a kind and affectionate husband, father and son to your plaintiffs. He was constantly interested in their welfare and ministered to their needs. He made contributions and rendered services of pecuniary value to his family. It would have been reasonably expected that he would have continued to aid his family and to comfort, counsel and care for them. It would have been reasonably expected that he would have continued to render services of pecuniary value to them had it not been for his untimely and tragic death. Elizabeth Hall, the widow, was 45 years of age at the time of her husband's death, with a life expectancy of 33.9 years, according to the United States Life Tables, 1973, Volume II, Section 5.

## IV.

By reason of all of the above and foregoing and on account of the death of Dean C. Hall, your plaintiffs are entitled to recover damages from the defendants, jointly and severally, in the reasonable and just sum of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000), to be apportioned among your plaintiffs as to the Court and Jury may seem just and proper under all of the circumstances.

WHEREFORE, Premises Considered, plaintiffs pray that defendants be cited in terms of the law to appear and answer herein, and that upon final trial of this cause they have judgment against the defendants, jointly and severally, in the reasonable and just sum of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000), to be apportioned among your plaintiffs as to the Court and Jury may seem just and proper; that they have interest on the judgment at the legal rate; that they recover their costs of Court in this behalf expended; and that they have such other and further relief, both general and special, legal and equitable, to which they may show themselves justly entitled, and in duty bound will ever pray.

BILBY, THOMPSON, SHOENHAIR &  
WARNOCK, P. C.

900 Valley National Building  
Tucson, Arizona 85701

HELM, PLETCHER & HOGAN  
2800 Two Houston Center  
Houston, Texas 77002 654-4464

/s/ G. E. Pletcher

G. E. PLETCHER

Attorneys for Plaintiffs

IN THE  
DISTRICT COURT OF HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

No. 1,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

**SPECIAL APPEARANCE OF HELICOL AND MOTION TO  
QUASH AND DISMISS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Helicol, one of the Defendants in the above styled and numbered cause, and makes this special appearance pursuant to Rule 120A of the Texas Rules of Civil Procedure for the sole purpose of presenting this Motion objecting to the jurisdiction of this Court over the Defendant, Helicol. For cause Defendant presents to the Court the following:

**I.**

Helicol maintains that it is not a proper party to this suit as Texas Courts have no jurisdiction over its person or its property.

**II.**

This Motion to the jurisdiction is filed prior to a Plea of Privilege, or any other plea, pleading or motion.

**III.**

Helicol is not incorporated under Texas law and has never, at any relevant time, qualified to do business in Texas. Defendant is not amenable to process issued by the Courts in this state in this cause for the reason that the Defendant, Helicol, is not a resident of the State of Texas, does not maintain its domicile in the State of Texas, is not engaged in business in the State of Texas, does not maintain a place of regular business in the



State of Texas, does not have an agent or representative engaging in business in the State of Texas, and neither the Defendant nor any agent nor representative was served with citation herein. Defendant, Helicol, does not have, with regard to the cause of action alleged by the Plaintiffs, those minimum contacts with the State of Texas that will constitutionally support jurisdiction over Defendant's person in this cause.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this Motion to the jurisdiction be set for hearing by this Honorable Court, that upon said hearing its Motion be sustained and that this entire proceeding be dismissed for want of jurisdiction over the person of the Defendant, Helicol.

Respectfully submitted,

SEWELL, JUNELL & RIGGS

/s/ By Daniel O. Goforth

DANIEL O. GOFORTH

701 Capital National Bank Bldg.

Houston, Texas 77002 652-8700

Attorneys for Defendant,

Helicol

IN THE  
DISTRICT COURT OF HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

No. 1,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

**PLAINTIFFS' INTERROGATORIES TO DEFENDANT  
HELICOL AND ANSWERS THERETO, DATED  
NOV. 30, 1976, NOS. 1, 2, 75.**

1. Is Helicol incorporated under the laws of Colombia, or of any other country?
  1. Helicol is incorporated under the laws of Colombia.
2. If so, indicate:
  - a. The country of incorporation.
  - b. The address of its principal place of business or registered office.
2. a. Colombia
- b. Bogota, Carrera 7A, No. 16-84-A
75. Is the attached instrument (Exhibit B) a true and correct translation of Exhibit A?
  75. The translation is generally a true and correct translation of Exhibit A but there appear to be some errors in the translation.

[Exhibit B follows]

**EXHIBIT B****CONTRACT BETWEEN HELICOL  
AND CONSORCIO, DATED NOVEMBER 11, 1974.****CONTRACT**

It is recorded by the present document, the contract for Lending of Transport Services with helicopters, made by one party, Helicopteros Nacionales de Colombia "Helicol" S.A. who herein after shall be known as "HELICOL", with residence in Carrera 9a No. 16-51, Bogota, Colombia duly represented by its attorney in Peru, Dr. Gonzalo Garlando Inturralde Pervian, Voting Certificate Number 2910034 and Tax Certificate Number 058821, who named as his legal residence for purposes of this contract, Jr. Azangaro # 450, 8th floor, Lima. And, by the other party, WILLIAMS, SEDCO, HORN CONSTRUCTORS, with tax certificate number 9778713, duly represented by its attorney, Gerald J. Riga, who, herein after shall be known as CONSORCIO, with legal residence in Lima, Las Magnolias, 765, San Isidro; in accordance with the following terms and conditions:

**FIRST:** By means of this contract HELICOL agrees to supply, at the request of CONSORCIO, transportation services with a helicopter, allotted to the movement of persons and things which may be indicated in the development of their operations in any place which CONSORCIO designates in the Republic of Peru. To that purpose, It will place at the disposal of CONSORCIO, one helicopter, Bell brand, Model 205-A1, equipped with hook for outside cargo with capacity for 15 passengers, in good working condition, as well as crew and maintenance personnel necessary for the normal execution of the work requested by CONSORCIO.

**TWO:** HELICOL agrees that the execution and development of the present contract will be done with the existing requirements and other applicable regulations which may affect the completion of the obligations of this agreement, and, that the helicopter supplied by virtue of this contract, will give continous service subject to the corresponding technical specifications.

THREE: HELICOL places at the disposal of CONSORCIO the helicopter described in the First Clause of this Contract; along with the crew, parts and spare parts necessary for its normal function. Equally, it agrees to keep this helicopter duly maintained and repaired during the existence of this contract, at its own expense.

FOUR: CONSORCIO may use the helicopter referred to in the preceeding clause from 0700 to 1700 daily, in normal operating conditions. Nevertheless, it is understood that for maintenance reasons, said helicopter will remain inactive up to three (3) days per month. These periods of inactivity may accumulate up to two (2) consecutive months, without affecting the minimum monthly guaranteed for flying hours, to paid by CONSORCIO, according to Clause Seven of this contract. In case the inactivity exceeds the previously cited period of three days, the 120 hours guaranteed monthly, referred to in clause seven, will be reduced to a rate of 5 hours for each day exceeding the three days previously mentioned, that the helicopter stopped working.

FIVE: During the existence of this contract, HELICOL agrees not to use, without prior consent from CONSORCIO the helicopter referred to in the present contract, for work or services different from those stipulated, except for the training of personnel in jobs which must be done or in test flights for maintenance. These training or maintenance flights will be at the expense of HELICOL.

SIX: CONSORCIO agrees to supply at his expense:

- a) The transportation from the city of Lima to the base of operations, for pilots, mechanics, and necessary administrative personnel related to operation, from beginning to end, during its regular work shifts and breaks. Also, the transport of parts and items necessary to the operations from Lima to the base of operations and vice-versa.
- b) The fuel, grease, and oil for the helicopter in the place of operation.

- c) The housing and food for the personnel in charge of the operation and maintenance of the helicopter, in the same conditions which they have for their administrative personnel.
- d) All medical and sanitary services for its own personnel in the place of operation, being understood that CONSORCIO does not assume responsibility for medical treatment received by personnel of HELICOL.
- e) Installations and facilities adequate to complete the work related to maintenance of the helicopter, including—hanger, water, compressed air, electric power and a place suitable for the warehousing of parts in the base of operation.
- f) The personnel necessary for the supplying of fuel and for cleaning, loading, and unloading work.
- g) Screens, baskets, and other items necessary for the transport of external cargo by helicopter.

SEVEN: The price for services, which, in accordance with this contract HELICOL will lend to CONSORCIO will be: Thirty one thousand nine hundred dollars (\$31,900.00) per month, plus one hundred eighty five dollars (\$185.00) per flying hour up to 120 hours. All the hours over 120 hours per month will be four hundred fifty dollars and 83 cents (US \$450.83) per flying hour.

The parties agree that flying time will be counted from the time the pilot starts the motor or turbine in preparation for the real flight until the moment that the same pilot begins to switch off the same after landing. The registering of flight time will be kept separately by the pilot and by a representative of the company, in hours and tenths of hours, on forms supplied by HELICOL. Times will be registered in logs kept for this purpose and for the helicopter. A duplicate of these logs will be kept each of them having to make the entries which they may record in their logs and those of the other party. Flying time noted in these logs will serve as basis for the monthly invoicing which HELICOL will make to the company.

**EIGHT:** The monthly invoicing will be made up from HELICOL to CONSORCIO, in American dollars, the first 10 days of each month in their offices in Lima and must be paid by the main office of CONSORCIO within thirty days following their presentation.

The cancellation of said bills will be done, sending the respective amount in the account of Helicopteros Nacionales de Colombia "HELICOL" S.A. in the Bank of America, 41 Broad Street, New York.

**NINE:** The CONSORCIO will accept in all cases the opinions which the pilot of HELICOL give, when such opinions refer to flight conditions of the helicopter, atmospheric conditions, loading and unloading of machinery, fuel quality, and in general, any matter which involves points of view of a technical nature related to the operations of the helicopter.

**TEN:** For the purpose of this contract, it is understood that HELICOL act as independent contractor. Consequently, none of their workers will be considered as agents or workers for CONSORCIO.

**ELEVEN:** HELICOL agrees to maintain during the existence of this contract the insurance policies which at present protect its own civil responsibilities in conformity with the terms and conditions and stipulations of such policies to those which the parties remit, whose limits are:

RESPONSIBILITIES FOR OPERATION OF AIRCRAFT	SINGLE COMBINED LIMIT FOR THE AIRCRAFT— EACH ACCIDENT
Bodily injury to third parties, passengers, and damage to property of third parties	US\$ 4,000,000.00
Medical Expenses	US\$ 5,000,000.00 for each passenger and crew

**TWELVE:** HELICOL assumes the responsibility for damages, loss in property, injury or death of any person or persons, including its own personnel, resulting from its operations when there may be reason, in accordance with the Laws of the Republic of Peru, whenever fault on the part of CONSORCIO may not be determined.

**THIRTEEN:** HELICOL is not responsible for loss or damage to any property or equipment which it may transport in its helicopter or which it may cause, whether or not it may be due to carelessness or negligence of its workers or agents; except in case of duly proven serious error.

**FOURTEEN:** This contract will be in force beginning from the date of arrival of the helicopter in the CONSORCIO'S base of operations, and will have a duration of twelve months as minimum time and 18 months as maximum time. After 12 months, CONSORCIO may terminate the contract, in writing, advising HELICOL 30 days in advance.

**FIFTEEN:** In case the helicopter is damaged or completely useless and if within the following 15 days the parties have not mutually made another arrangement in writing; the obligations of this agreement inasmuch as they refer to the destroyed or damaged helicopter, will automatically cease from the date on which said destruction or damage occurred.

**SIXTEEN:** The notices which are to be done in the development of the execution of the clauses of this agreement, are to be addressed to HELICOL and CONSORCIO in the Republic of Peru at the addresses given in the introduction of this contract.

**SEVENTEEN:** For mobilization and de-mobilization from the beginning to the end of the operation, CONSORCIO will pay HELICOL the amount corresponding to 6 flying hours for helicopter and in each sense in accordance with the rate of \$450.83 per hour established in Clause 7. Also, CONSORCIO will re-imburse HELICOL for transportation expenses which they might have incurred in Peru, related to the import and export of the helicopters, parts and items of this contract.

EIGHTEEN: It shall be understood that HELICOL and CONSORCIO may not have to fulfill the obligations stipulated in the present contract when such non-fulfillment arises from or originates as a result of "force majeure" or fortuitous case or other causes which may be outside the control of the parties and which may form said fortuitous case or force majeure.

NINETEEN: The parties, in common agreement, indicated as residence for all related to the present contract, the city of Lima and submit to the jurisdiction of the Judges and Courts of Lima, Peru. Consequently, the present contract is signed with 2 copies of the same, by the parties in Lima, the 11th of November, 1974.

HELICOPTEROS NACIONALES DE COLOMBIA S.A.  
"HELICOL"

Dr. Gonzalo Garland Iturralde

WILLIAMS SEDCO HORN CONSTRUCTORS  
Gerald J. Riga



IN THE  
DISTRICT COURT OF HARRIS COUNTY, TEXAS  
164TH JUDICIAL DISTRICT

No. 1,098,921

LOUISE C. MOORE, *et al.*

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al*

**INTERROGATORIES OF WILLIAMS-SEDCO-HORN TO  
DEFENDANT HELICOL AND ANSWERS THERETO,  
DATED MARCH 10, 1977.**

TO: HELICOL, DEFENDANT HEREIN, AND ITS ATTORNEY OF  
RECORD, MR. DANIEL O. GOFORTH, SEWELL, JUNELL &  
RIGGS, 900 CAPITAL NATIONAL BANK BUILDING, HOUS-  
TON, TEXAS 77002

1. Please state your name, address and title or position.

1. Jorge A. Gonzalez P.  
Consultant to Management  
Helicopteros Nacionales de Colombia S.A. "Helicol"  
Carrera 7a. No. 16-84-A  
Bogota, Colombia

2. Please identify by name and address each of the officers  
and directors of Helicol.

- |                          |   |
|--------------------------|---|
| 2. Francisco Restrepo O. | General Manager<br>Carrera 7a. No. 16-84-A<br>Bogota, Colombia        |
| Jorge Mosquera           | Director of Maintenance<br>Helicol<br>Barranquilla, Colombia          |
| Cap. Alberto Guingue     | Director of Operations<br>Carrera 7a. No. 16-84-A<br>Bogota, Colombia |
| Enrique Baquero G.       | Director of Finances<br>Carrera 7a. No. 16-84-A<br>Bogota, Colombia   |

Arturo Garcia Salazar	Member of the Board Carrera 9a. No. 80-15 Bogota, Colombia
Ramiro Ramirez	Member of the Board Carrera 35 No. 98-A-30 Bogota, Colombia
Henry Villa	Member of the Board Calle 89 No. 6-33 Bogota, Colombia
Roberto Pumarejo	Member of the Board (Alternate) Calle 42 No. 50-B-32 Barranquilla, Colombia
Alfonso Ramirez	Member of the Board (Alternate) Diagonal 109 No. 15-21 Bogota, Colombia
Carlos Pizano	Member of the Board (Alternate) Calle 77 No. 8-01 Bogota, Colombia

3. Please list each and every subsidiary of Helicol by full name, address and country of organization.

3. *Petroleum Helicopters de Colombia*

Calle 32 No. 7-04  
Bogota, Colombia

Country of Organization: Colombia

4. Please list every corporation, partnership, or other organized business entity which is owned in whole or in part by Helicol, and list the names and addresses of all officers and directors of each.

4. *Petroleum Helicopters de Colombia*

Calle 32 No. 7-04  
Bogota, Colombia

Jorge Cardenas N.	President Calle 32 No. 7-04 Bogota, Colombia
Bernardo Cardenas N.	Manager Calle 32 No. 7-04 Bogota, Colombia
Jorge Cardenas N.	Member of the Board Calle 32 No. 7-04 Bogota, Colombia
Efrain Ospina	Member of the Board Calle 34 No. 43-31 Bogota, Colombia
Rodney Mendez	Member of the Board Calle 122 No. 28-55 Bogota, Colombia
Alfonso Ramirez	Member of the Board Diagonal 109 No. 15-21 Bogota, Colombia
Mario Uracoechea M.	Member of the Board Calle 17 No. 5-21 Bogota, Colombia
Bernardo Cardenas	Member of the Board (Alternate) Calle 32 No. 7-04 Bogota, Colombia
Jardary Suarez	Member of the Board (Alternate) Carrera 16 No. 95-54 Bogota, Colombia
Alvaro Fernandez	Member of the Board (Alternate) Calle 121 No. 11A-38 Bogota, Colombia
Manuel Bermudez	Member of the Board (Alternate) Calle 119 No. 41-20 Bogota, Colombia

Manuel Martinez	Member of the Board (Alternate) Carrera 5a. No. 28-94. Bogota, Colombia
-----------------	--

Helicopteros Nacionales S. A. "HELIECUADOR"

Apartado Postal No. 323  
Quito, Ecuador

Federico Davalos Tamayo	Manager Apartado Postal 323 Quito, Ecuador
Julio Vela Suarez	Member of the Board c/o Apartado Postal 323 Quito, Ecuador
Arturo del Pozo	Member of the Board c/o Apartado Postal 323 Quito, Ecuador
Cor. Gustavo Izurieta	Member of the Board c/o Apartado Postal 323 Quito, Ecuador
Francisco Restrepo O.	Member of the Board Carrera 7a. No. 16-84-A Bogota, Colombia
Morales	Member of the Board c/o Apartado Postal 323 Quito, Ecuador
Ernesto Mendoza Lince	Member of the Board Carrera 5a. No. 86-40 Bogota, Colombia
Augusto del Pozo	Member of the Board (Alternate) c/o Apartado Aereo Quito, Ecuador
Manuel Cabeza de Baca	Member of the Board c/o Apartado Postal 323 Quito, Ecuador

Jorge A. Gonzalez P.	Member of the Board Carrera 7a. No. 16-84-A Bogota, Colombia
Alfredo Serrano	Member of the Board (Alternate) c/o Apartado Postal 323 Quito, Ecuador
Jorge Morales Rivas	Member of the Board (Alternate) c/o Apartado Postal 323 Quito, Ecuador

In addition, Helicol has minority share holdings in the following companies:

Sociedad Aeronautica de Medellin, Calle 52 No. 52-11 Medellin, Colombia

Corporacion de Viajes "COVIAJES" Ltda. Calle 19 No. 4-74 Bogota, Colombia

5. Does Helicol own, lease or otherwise have use of any real property in the State of Texas? If so, please state its address.

5. No.

6. Since January 1, 1970, has Helicol maintained at any time an account with any bank or other financial institution chartered or organized under the laws of the United States? If so, for each such account, please state:

- a. Name of bank or financial institution;
- b. Address of bank or financial institution;
- c. Account numbers;
- d. Type of account.

6. Yes.

- a. Bank of America.
- b. 30-40 Broad St., New York, N.Y.
- c. Checking accounts Nos. 6-31-30624, 6-31-30628, 6-31-30630.

Revolving Fund Account: No. 6-31-30626

7. Please identify by serial number and name of manufacturer the helicopter involved in the accident made the basis of these lawsuits. With regard to that helicopter, please state the following:

- a. Date of purchase from manufacturer;
- b. Was a purchase order issued? If so, please attach a copy to your answers to these interrogatories or identify the purchase order by number, date, description of item or items purchased and amounts.
- c. Terms of payment for helicopter.
- d. Method of payment including the name and address of each bank or financial institution, if any, that handled or participated in the transfer of funds in payment for the helicopter.
- e. Was the helicopter financed? If so, please identify by name and address each bank or financial institution that participated in whole or in part, directly or indirectly, in the financing arrangement and please state the terms of such arrangement.
- f. Please attach a copy to your answers to these interrogatories or identify and describe in detail, all written documentation, other than the purchase order mentioned above, relating to or in any way involved in the purchase of the helicopter.
- g. Please identify the address of the location where the helicopter was delivered by the manufacturer to Helicol.
- h. Please attach a copy of your answers to these interrogatories or identify and describe in detail all written correspondence and communication regarding the helicopter in question which was directed to or received from an address or location in the State of Texas.

7. S/N30-079

**BELL HELICOPTER COMPANY**

- a. April 10, 1970.
- b. No - see copy Purchase Agreement attached.
- c. Cash upon delivery.

- d. Cash upon delivery-Bank of America, New York.
- e. Yes,  
 Bank of America, 30-40 Broad St.,  
 New York -10%  
 Export - Import Bank, New York 90%  
 Terms: 4yrs. 5 months a 9.25% per annum  
 Loan has been liquidated in full
- f. Attached copies of:
  - 1. Invoice No. HEL-3 25-70-Bell Helicopter Co.  
 dated April 2, 1970, authenticated by Colombia  
 Consulate.
  - 2. Commercial invoice Bell Helicopter Co., No.  
 H096-Dated 4-9-70.
  - 3. Authenticated Bill of Sale, in Spanish.
  - 4. Consular Invoice No. 938-Miami dated April 2/70.
- g. Bell Helicopter Co., Fort Worth, Texas U.S.A.
- h. None.

8. From January 1, 1970 through the date of your answers to these interrogatories, please identify each and every time an employee, agent or representative of Helicol has visited the State of Texas, and with regard to each please state the following:

- a. Date;
- b. Name and address of individual; and
- c. Reason for visit.

8. See attached exhibit.

9. Please identify every tangible item that Helicol or any entity acting on its behalf has purchased, from January 1, 1970 until the present date, which was manufactured in Texas, ordered from Texas or shipped from Texas. With regard to each item identified above, please state:

- a. The entity in Texas who manufactured, received the order or shipped the item;
- b. The amount of money paid for each such item;

c. The method of payment of each such item including the name and address of entity to which payment was directed and the name and address of the bank or financial institution if payment was made by draft or similar instrument.

9. With very few, isolated and minor exceptions all imports from Texas have been purchased from the Bell Helicopter Co., and these consist of numerous orders covering exclusively helicopter aircraft, its parts and components. See the attached exhibit which supplies the aircraft imported and the yearly value of parts and components imported. Payments were made by draft through the Bank of America, New York, N.Y.

10. Please identify by name of parties and date any and all contracts for the performance of services by Helicol for any corporation organized under the laws of any state of the United States entered into since January 1, 1970. With regard to each contract listed please attach a true and correct copy to your answers or please state the following:

- a. Term;
- b. Description of services to be performed;
- c. Names of persons signing for all parties;
- d. Amount and terms of payment including name and address of individual, partnership, corporation or other business entities to which payments are or were to be made.

10. 1. The Superior Oil Company  
February 20, 1970  
August 10, 1973
2. Colombian Gulf Oil Company  
May 15, 1971
3. Farmland International Energy Co.  
June 15, 1976  
January 15, 1976
4. Cayman Corporation of Colombia  
October 18, 1973  
January 22, 1975



5. Anchorage Helicopters Service  
January 22, 1975
6. Colombian Cities Service Corp.  
November 29, 1972
7. Rocky Mountain Helicopters Inc.  
March 11, 1976
8. Petty Geophysical Company  
February 15, 1976  
April 27, 1972
9. Geophysical Service Inc. "G.S.I".
10. Amoco Colombian Oil Company  
September 18, 1974  
November 13, 1975
11. Bolivian Oil Company  
April 30, 1976
12. Williams-Sedco-Horn  
1974 - 1975

To the best of my knowledge each of the above contracts were for work to be performed outside of the United States.

11. Please list by name and address each company or other business entity that has provided directly or indirectly general liability insurance coverage on the operations of Helicol since January 1, 1970.

11. From January 1, 1970 to May 31, 1976:

COLSEGUROS (LIDER) ..... 45%  
Calle 17 No. 9-82

BOLIVAR ..... 28%  
Carrera 10 No. 16-39

SURAMERICANA ..... 27%  
Avenida Jimenez No. 8-49-Piso 30.

From June 1, 1976 to date:

SEGUROS LA FENIX S.A. (LIDER) ..... 25%  
Carrera 7a. No. 33-33 Piso 50.

Compania Agricola de Seguros ..... 20%  
Carrera 7a. No. 35-40

La Previsora Compania de Seguros..... 15%  
Calle 58 No. 9-57

La Libertad Compania de Seguros S.A..... 15%  
Avenida Jimenez No. 7-25 Piso 30.

Seguros Tequendama S.A. .... 15%  
Carrera 7a. No. 26-20-Pisos 30., 40y 60.

Aurora S.A. Compania de Seguros ..... 10%  
Carrera 10 No. 19-65 Piso 30.

12. With regard to the contract dated November 11, 1974 between Helicol and Williams-Sedco-Horn Constructors (Con-sorcio), please identify each and every company directly or indirectly supplying the insurance coverage referred to in Paragraph 11 of said contract.

12. COLSEGUROS (LIDER) ..... 45%  
Calle 17 No. 9-82

BOLIVAR..... 28%  
Carrera 10 No. 16-39

SURAMERICANA..... 27%  
Avenida Jimenez No. 8-49-Piso 30.

**TRANSCRIPT OF  
SPECIAL APPEARANCE HEARING  
HELD FEBRUARY 28, 1978**

[1] CAME ON TO BE HEARD, before the Honorable Wyatt H. Heard, Judge of the 190th Judicial District Court of Harris County, Texas, on the 28th day of February, 1978, the above entitled and numbered cause for a hearing; and both plaintiff and defendant appearing in person and/or by counsel, an announcement of ready having been made, the following facts were adduced and evidence admitted, viz:

\* \* \*

**[Testimony of Jorge Alberto Gonzalez]**

[6] MR. GOFORTH (COUNSEL FOR HELICOL): The movant would call Jorge Alberto Gonzalez by deposition, taken on the 25th day of January, 1977, at the offices of Sewell, Junell & Riggs, before Diane S. Richer, notary public in and for Harris County, Texas, and being by me first duly sworn, testified by his oral deposition as hereinafter set out. . . .

\* \* \*

[8] Q. "Would you state your full name, please, sir?"

A. Yes; Jorge Alberto Gonzales.

Q. Mr. Gonzalez, would you state your address?

A. My home address?

Q. Yes, sir.

A. Calle—C-a-l-l-e—19, No. 1231, Bogota, Colombia.

Q. You are a citizen of what country, sir?

A. Colombia.

Q. You were born in Colombia?

A. Yes, sir.

\* \* \*

[11] Q. Are you employed by Helicol?

A. Yes, sir.

Q. You are paid by Helicol?

A. Yes, sir.

Q. Does your position as consejero require you to be in contact with the officers and employees of Helicol on a day-to-day basis?

A. Yes, sir.

Q. Do you advise the officers and employees of Helicol daily?

A. I would say yes.

Q. Do your functions or job require you to be familiar with all phases of the Helicol operations?

A. I would say yes, but mostly in connection with management policy rather than with the strictly technical aspect; the operations.

Q. Are you here today by agreement of the parties that you would come to Houston and give your deposition testimony?

[12] A. Yes. I'm here because I was so instructed.

Q. By whom were you instructed?

A. Or requested to by the management of Helicol.

MR. PLETCHER [Counsel for plaintiffs]: By whom, sir?

THE WITNESS: Management of Helicol.

Q. (By Mr. Goforth) Are you in Houston or in Texas for any purpose other than to attend this deposition and give your testimony?

A. No, sir.

Q. Have you been authorized by the management of Helicol to speak for Helicol today in giving your testimony?

A. I would say yes.

Q. For purposes of explanation, tell us generally and briefly what functions and services are performed by Helicol.

A. Well, primarily Helicol was founded to operate helicopters for third parties, and the company is equipped for that purpose—and to do maintenance work for its own fleet and for aircraft of third parties, especially in connection with maintenance, overhaul, repairs, et cetera.

[13] Q. So, as I understand it, is Helicol basically in the business of providing helicopter service and maintenance and repair for interested parties?

A. Yes.

Q. When was Helicol incorporated?

A. 1955.

Q. Where was it incorporated?

A. Bogota.

Q. Who financed the incorporation of Helicol?

A. Aerovias Nacionales De Colombia—Avianca—and Keystone Helicopters of Philadelphia.

Q. Do you know what the original—

(Discussion off the record.)

Q. (By Mr. Goforth) What is the proper name of the airline that is commonly called Avianca Airlines?

A. Aerovias Nacionales De Colombia, S.A.; A-e-r-o-v-i-a-s.

Q With your permission, Mr. Gonzalez, we will refer to in this deposition Avianca Airlines as Aerovias for purposes of distinguishing it from other companies or incorporated entities. Is that fair enough?

[14] A. That seems correct, yes.

Q. Is there yet another entity that is called Avianca, Inc.?

A. Yes.

Q. Is Avianca Inc., incorporated?

A. No, no.

Q. Is Aerovias incorporated?

A. Bogota.

Q. That's Colombia?

A. Yes, sir.

Q. So, for purposes of this deposition, if it's agreeable to you, I would like to refer to Helicol, of course, as Helicol, to the airline as Aerovias, and to the New York corporation as Avianca Inc. Is that all right with you, sir?

A. It seems very good.

Q. If you know, sir, what was the original financing arrangement for the incorporation of Helicol?

A. The original capital, I believe, was 150,000 pesos, Colombian pesos.

[15] Q. Do you know how much of that 150,000 pesos was contributed by Aerovias?

A. 77,000.

Q. And was the remainder contributed by Keystone Helicopter?

A. Correct.

Q. Is Keystone Helicopter an American company?

A. Yes, sir.

Q. Do you know where it is incorporated?

A. I don't know where it's incorporated. I know their place of business is in Philadelphia.

Q. Does Keystone Helicopter still own any of the stock in Helicol?

A. Not to my knowledge.

Q. Are any of the stockholders of Helicol at the present time United States citizens?

A. Stockholders?

Q. Yes, sir.

A. No, sir.

Q. Where is the principal place of business of Helicol?

A. Bogota.

Q. Where does it conduct business?

A. Well, of course, it varies with the times. But it conducts business in Colombia; it conducts business in Ecuador; it conducts business in Peru.

[16] Q. Can you think of any others?

A. And Brazil.

Q. Can you think of any other countries besides those four where Helicol has conducted business?

A. I think some years before I was connected with Helicol, I think, they did some work in Nicaragua; offshore work.

Q. No other countries that you can think of?

A. No.

\* \* \*

Q. Does Aerovias hold any of the stock in Helicol at the present time?

A. Yes, sir.

Q. How much of the stock is held by Aerovias?

A. Ninety-four percent.

[17] Q. Do you know who the remaining stockholders are?

A. Of Helicol?

Q. Yes, sir.

A. Yes. Aerovias Corporation De Viajes—

Q. You are probably going to have to spell that for the reporter.

A. C-o-r-p-o-r-a-c-i-o-n and then separately D-e and then separately V-i-a-j-e-s and separately L-T-D-A. Then, Mr. Sab-sa Pratel, S-a-b-s-a and separately P-r-a-t-e-l. Separately, now another name, Rafael—just the way it sounds—R-a-f-a-e-l, Barvo, B-a-r-v-o. And another one, Juan Pavlo; J-u-a-n P-a-v-l-o. Ortega, which is O-r-t-e-g-a, Gomez, G-o-m-e-z, and Company, S.A.

Q. Those individuals or entities that you just named own the remaining six percent of the stock of Helicol; is that correct?

A. That is correct.

Q. Are there stockholders that are common to both Helicol and Aerovias?

A. No.

Q. Is Aerovias a publicly held company?

[18] A. Yes.

Q. Is its stock traded on a stock market in Colombia?

A. Yes.

Q. Is Helicol a publicly held company?

A. Yes.

Q. Is its stock traded on the stock market in Colombia?

A. No.

Q. We have a term in the United States which is "over the counter," and I don't know if you are familiar with that term. But, if you are, is Helicol basically traded over the counter?

A. No.



Q. Is Helicol stock offered simply when there is some offered for sale than it is open for the public to purchase that stock?

A. Will you repeat the question, please?

Q. All right. I'll try to rephrase it. If one of the owners of Helicol stock decided to sell or transfer some of this stock, would the stock simply be open for sale to the public to anybody who wanted to buy it and had the means to buy the stock?

[19] A. I would say yes.

Q. Do any of the officers of Aerovias serve as officers of Helicol?

A. No.

Q. Do any of the officers or directors of Aerovias serve as directors of Helicol?

A. Yes.

Q. Do any of the officers of Avianca Inc., serve as officers of Helicol?

A. No.

Q. Do any of the officers of Helicol serve as officers or directors of Aerovias or of Avianca Inc.?

A. Will you repeat that, please?

Q. Do any of the officers of Helicol serve as officers or directors of Aerovias or of Avianca Inc.?

A. No.

Q. To your knowledge, does Avianca Inc., hold any stock in Helicol?

A. No.

Q. Do any employees of Helicol serve as employees of Aerovias?

A. No.

Q. Do any of the employees of Helicol serve as employees of Avianca, Inc.?

[20] A. No.

Q. Do any of the employees of Aerovias serve as employees of Helicol?

A. No.

Q. Do any of the employees of Avianca Inc., serve as employees of Helicol?

A. No.

Q. To your knowledge, sir, are any of the officers or directors of Helicol located inside the United States, or do they live inside the United States?

A. Officers or directors?

Q. Yes, sir.

A. No.

Q. Are any employees of Helicol located inside the United States?

A. No.

Q. Are any of the records of Helicol kept inside the United States?

A. No, sir.

Q. Who pays the salaries of the employees of Helicol?

A. Helicol.

Q. Does Aerovias pay any of the salaries of the employees of Helicol?

[21] A. No, sir.

Q. Who pays the expenses for employees of Helicol?

A. Helicol.

Q. Does Aerovias pay any of the expenses of the employees of Helicol?

A. No.

Q. Does Avianca Inc., pay any of the salaries or expenses of the employees of Helicol?

A. No, sir.

Q. Does Helicol share offices or office space with either Aerovias or Avianca Inc.?

A. No.

Q. What functions or services, sir, are provided or rendered by Aerovias?

A. In general, you mean?

Q. Yes, sir.

A. Well, Aerovias is an airline that transports passengers and cargo domestically in Colombia—within Colombia—and passengers internationally to the United States and Europe.

Q. Does Aerovias, to your knowledge, land in Texas?

[22] A. I beg your pardon?

Q. Does it have any flights that originate or end in Texas?

A. No, sir.

Q. Does it have any flights at all that stop in Texas?

A. No, sir.

Q. Tell me, if you know, sir, what Avianca Inc., does.

A. I couldn't tell you. I'm not sufficiently familiar to tell you.

Q. Does Aerovias conduct any business on behalf of Helicol, sir?

A. No, sir.

Q. Does Aerovias recruit business on behalf of Helicol?

A. No.

Q. Does it recruit employees on behalf of Helicol?

A. No.

Q. Does Aerovias keep the books and records of Helicol?

A. No.

Q. Helicol keeps its own books and records?

A. Correct.

[23] Q. It pursues and recruits its own business and employees?

A. Yes, sir.

Q. Does Avianca recruit any business for Helicol?

A. No.

Q. Does Avianca Inc., recruit any employees for Helicol?

A. Avianca, Inc.?

Q. Yes, sir.

A. No.

Q. Has Aerovias, to your knowledge, ever loaned any money or provided any financing for Helicol?

A. No.

Q. From where does Helicol obtain necessary financing or necessary capital?

A. I would say outside of the capital that the company obtains from the sale of shares to the shareholders, all the source of financing come from banks.

Q. So, any financing for needed equipment is provided by outside banks?

A. Well, I would say for the purchase of equipment, for example, where large amounts involved, by outside banks; yes.

[24] Q. Of course, Helicol—

A. For local—might buy some equipment locally—you might get the financing from local banks.

Q. Sure. Of course, Helicol has some working capital of its own. Any time it has to buy a piece of equipment it doesn't necessarily mean it has to go to a bank to do it?

A. No, that's right.

Q. What I am asking is: if when Helicol needs additional financing, is it true that it goes to banks or some other sort of financial agency to get that capital?

A. I would say to banks.

Q. Does it or has it ever gone to Aerovias to obtain financing?

A. Not to my knowledge.

Q. Has Aerovias ever bought a helicopter for Helicol?

A. No.

Q. Has it ever bought any other form of equipment for Helicol?

A. No.

Q. Does Helicol ever provide any of its services to Aerovias?

[25] A. No, I don't think so, no.

Q. Does Aerovias ever do any of the selling for Helicol?

A. No.

Q. Helicol has its own sales force?

A. Yes.

Q. Does Avianca Inc., ever do any selling for Helicol?

A. No.

Q. Do officers or employees of Helicol ever report to any officers or employees of Aerovias—

A. No.

Q. —or ever report to any officers or employees of Avianca Inc.?

A. No.

Q. I think you testified awhile ago that Helicol maintains its own separate set of books and records.

A. Correct.

Q. Do the people who keep these books and records report directly or indirectly to—or are they supervised by any officers or employees of Aerovias?

A. No.

Q. . . . any officers or employees of Avianca Inc.?

[26] A. No.

Q. What about the people in operations at Helicol; do they report to anybody at Aerovias or Avianca Inc., about their day-to-day operations?

A. No.

Q. People in sales or purchasing, do they report to people at Aerovias or Avianca Inc., about their day-to-day operations?

A. No, sir.

Q. Do the people in purchasing check first with anybody at Aerovias before they purchase equipment?

A. No.

Q. If Helicol wants or feels like it needs to buy a helicopter, do the people or the management of Helicol report or seek the advice or consent of people at Aerovias about this sort of purchase?

A. No. The management informs and seeks and obtains authority from the board of Helicol.

Q. Does Helicol or do any of its employees or officers ever buy equipment for Aerovias—

[27] A. No.

Q. —or ever buy equipment for Avianca Inc.?

A. No.

Q. Does Aerovias maintain any sort of internal control over the day-to-day operations of Helicol?

A. No.

Q. Does Avianca Inc., maintain any sort of internal controls over the day-to-day operations of Helicol?

A. No, sir.

Q. Does Helicol maintain and pay for its own insurance policies?

A. Yes, sir.

Q. Does Aerovias pay for any of the insurance that Helicol has?

A. No.

Q. Mr. Gonzalez, does Helicol have any employees in Texas?

A. No, sir.

Q. Does Helicol ever perform any of its helicopter operations in Texas?

A. No, sir.

Q. Has Helicol ever recruited employees in Texas?

[28] A. No, sir.

Q. Has it ever advertised for employees in Texas?

A. No, sir.

Q. Has it ever advertised for business in Texas?

A. No, sir.

Q. Has it ever advertised in any publication in Texas?

A. No, sir, not to my knowledge.

Q. Has it ever advertised in any publications in the United States?

A. Not to my knowledge.

Q. Has Helicol ever authorized anyone else to advertise for business in Texas on behalf of Helicol?

A. No, sir.

Q. To your knowledge, has Williams-Sedco-Horn ever engaged in any recruitment activities on behalf of Helicol in the United States?

A. Well, explain to me what do you mean by "recruiting activities."

Q. Recruiting for employees, for example.

A. No.

[29] Q. Has Williams-Sedco-Horn, to your knowledge, ever engaged in any recruiting activities for business on Helicol's behalf in the United States?

A. No.

Q. Has Williams-Sedco-Horn ever engaged, again to your knowledge, in any recruitment activities on Helicol's behalf in the United States?

A. No, sir.

Q. Has Williams-Sedco-Horn or has anyone ever been authorized to recruit in any fashion on Helicol's behalf in the United States—

A. No.

Q. —or any state thereof?

A. No.

Q. Has Helicol ever designated anyone in Texas or in the United States as an agent for service by process?



A. No.

Q. Does Helicol own or lease any property, either real or personal, in Texas?

A. No, sir.

Q. Or have any offices in Texas?

A. No, sir.

[30] Q. Or have any telephone numbers in Texas?

A. No, sir.

Q. Does it have a permit to do business in Texas?

A. Not that I know of, no.

Q. I assume that you would know if it did; is that correct?

A. Yes.

Q. The contract that was entered into by Helicol with Williams-Sedco-Horn for the transportation that was involved in this accident, was that contract negotiated or signed in the United States?

A. No, sir.

Q. Where was it signed, sir?

A. Lima.

Q. That's Lima, Peru?

A. Yes.

Q. Has Helicol ever negotiated or signed a contract in the United States to provide transportation?

A. No.

Q. Did the transportation provided for in the contract with Williams-Sedco-Horn involve travel to and from any point in the United States?

[31] A. You mean, from the point of Helicol?

Q. Yes, sir. What I mean is: Did Helicol agree in this contract to transport Williams-Sedco-Horn employees from one point to another in the United States?

A. No.

Q. Has Helicol ever entered into a contract with anyone that provided for transportation wherein Helicol would provide transportation within the United States?

A. Within the United States, no.

Q. From whom did Helicol purchase the helicopter involved in this accident, sir?

A. From the Bell Helicopter Company.

Q. Was it purchased from the Bell Helicopter plant in Fort Worth?

A. Yes, sir.

Q. Does Helicol on occasion purchase equipment such as helicopters or parts from companies located inside the United States?

A. Yes.

Q. This purchase of equipment, is that on an occasional or regular basis?

A. I would say on a regular basis.

[32] Q. How often would you be forced to purchase equipment or parts from United States based companies?

A. Well, let me see; weekly, monthly, as required.

Q. Just whenever you need. Is there a helicopter manufacturer in Colombia?

A. No.

Q. Is there a plant in Colombia that manufactures parts or equipment for helicopters?

A. No.

Q. So, whenever it is necessary for you to have additional parts for helicopters, on occasion you have to buy those parts from companies that are in the United States; is that correct?

A. Yes, sir.

Q. Does that require on occasion that you buy parts from companies inside of Texas?

A. I would say yes.

Q. Can you think of any company inside of Texas other than the Bell Helicopter plant at Fort Worth that you buy equipment from?

A. I can't think of anyone besides Bell, which doesn't mean to say that there might not be. There possibly would be.

[33] Q. What parts would Bell provide that you would find it necessary to have?

A. I would say structural parts perhaps; components sometimes.

Q. Does Bell provide the engines for the helicopters? Does it manufacture the engines?

A. No.

Q. When you need a part from an engine, do you go the manufacturer of that engine?

A. Yes, sir.

Q. Does Bell manufacture the drive shaft, the rotor shaft, and the propeller for helicopters?

A. I don't know.

Q. Do you know whether it manufactures the rotor shaft?

A. I don't know.

Q. Well, if you needed a part for a rotor shaft or for a propeller, would you go to the company that manufactured that rotor shaft or that propeller in order to get that part?

[34] A. Well, the purchasing department of Helicol through expedience, of course, decides in each case where the best source of replacement would be.

Q. Certainly.

A. Yes. So, I would say that varies.

Q. If one of your helicopters is damaged in some way in which the body is damaged, do you have a facility in Colombia or does Helicol have a facility in Colombia whereby it can repair a damaged body of a helicopter?

A. Yes, sir.

Q. So, would you find it necessary very often to buy replacement parts for a body of a helicopter, or would you simply repair the body of the helicopter yourself?

A. I think in certain cases we can manufacture under the company's specifications, of course, some parts. Other times they cannot be manufactured in Colombia, so it must be ordered from the factory.

Q. What I was really leading to: If the body of a helicopter is bent up or that sort of thing, would you repair that yourself, or would you send it back to the manufacturer to have that bent portion repaired?

[35] A. We would repair it ourselves. In other words, take, for example, a panel. If the panel can be repaired, we repair it. But if it's beyond repair, then, we order the panel from the manufacturer.

Q. Mr. Gonzales, is Helicol a profitable company in its own right?

A. Yes, sir.

Q. Does it have to depend on Avianca Inc., or Aerovias for funds to operate on a day-to-day basis?

A. No, sir.

MR. GOFORTH: I don't have any more questions."

Beginning again on Page 71, line 1, examination by Mr. Goforth, and stopping at page 71, line 15.

Q. "Mr. Gonzalez, have any of these contracts that you referred to awhile ago—I think you referred to one with Occidental and one with Texaco.

MR. PLETCHER: And Sunoco, Sun Oil Company.

[36] Q. (By Mr. Goforth) And Sun Oil Company—have any of those been signed or negotiated in Texas?

A. No.

\* \* \*

[39] Q. "Do you have bank accounts in the United States?

A. No, sir."

\* \* \*

Q. "Now, do you do business with any other company that you can think of in the State of Texas other than Bell Helicopter Company?

A. Supposedly, yes, but I can't think of any other company that I know of.

Q. Whether you can think of the name of it or not, do you know that Helicol does do business with other companies in Texas besides Bell?

A. I say I don't know. I don't know because—by that I mean that I'm not saying no, but I'm not saying yes because I cannot think of any company now. But it's very possible.

Q. I understand. Has Helicol had any dealings with Williams Brothers or Williams-Sedco-Horn other than the contractual agreement that was made between Helicol and Williams-Sedco-Horn for helicopters involving this particular job down there where these people were killed in the crash?

[40] A. The only negotiations we have had with Williams-Sedco-Horn has been in connection with helicopter operations in Peru.

Q. Well, I appreciate your answer, and that may have answered my question. Is this the only contract that, to your knowledge, Helicol has had with Williams-Sedco-Horn in the past; this one we're dealing with in this particular case?

A. Well, I think there might have been more than one contract.

Q. When you entered into the contract with Williams-Sedco-Horn that is involved in this particular helicopter crash—

A. Yes, sir.

Q. —did you agree to carry insurance?

A. I believe we did.

Q. Did you carry that insurance based upon American dollars?

[41] A. Yes."

\* \* \*

**Testimony of Joseph W. Branson**

MR. GRAHAM (COUNSEL FOR WILLIAMS-SEDCO-HORN)

[44] Q. "Would you state your full name for the record please, sir?

A. Joseph W. Branson.

Q. Where do you live?

A. 6807 East 75th, Tulsa, Oklahoma.

Q. How old are you?

A. 62.

Q. What do you do for a living?

A. I am Administrative Manager for Williams International.

Q. What is Williams International?

A. An international pipeline construction company.

\* \* \*

Q. Have you ever been associated with a company called Williams-Sedco-Horn?

A. Yes, sir.

[45] Q. In what capacity were you associated with them?

A. Administrative Manager.

Q. When did you begin to work with them?

A. In the latter part of April, 1975.

Q. Where had you been working before?

A. I had been working with Williams Pipeline Company in Tulsa.

Q. Where did you work for Williams-Sedco-Horn?

A. Houston, Texas.

Q. You came to Houston when?

A. April of 1975.

\* \* \*

Q. What were your duties beginning in April of 1975?

A. I was Administrative Manager in the Houston office.

Q. What were your duties as Administrative Manager?

A. In charge of all office procedure and accounts and personnel in the Houston office.

Q. I'll show you what has been marked as Defendants' Exhibits 1 through 10 for this deposition and ask you if you recognize them?

A. Yes, sir. These are checks and wire transfers written for the Bell Helicopter 214B.

[46] Q. Who were the checks paid from and to?

A. The checks and transfers were drawn on the account of Williams-Sedco-Horn payable to Rocky Mountain Helicopter.

Q. Where was the account of Williams-Sedco-Horn located?

A. First City National Bank, Houston, Texas.

Q. Where were the checks payable, where is Rocky Mountain located?

A. The wire transfers were payable to a New York bank and the checks were payable to Rocky Mountain Helicopter mailing address in Denver, Colorado.

Q. Let me ask you to look at what the reporter has marked Defendants' Exhibits 11 through 36 and ask you if you can identify those?

A. And some mailed to Provo, Utah.

Q. Tell us what Exhibits 11 through 36 are?



A. Wire transfers and checks made payable to Helicol.

Q. What bank or what financial institution are the checks drawn on?

A. The wire transfers and checks were drawn on the First City National Bank in Houston, Texas.

[47] Q. Whose account were they drawn on?

A. Williams-Sedco-Horn.

Q. Where were the checks made payable to?

A. Helicol, Bank of America, Panama City, Panama, and the Bank of America in New York, New York.

\* \* \*

Q. I want to ask you some questions about the checks.

A. Yes, sir.

Q. Are these checks, Exhibits 1 through 36, part of the business records of Williams-Sedco-Horn?

A. Yes, sir, they are.

Q. Who is the custodian of the records and checks?

A. I am.

Q. Were the checks written in the ordinary course of business of Williams-Sedco-Horn?

A. Yes, sir, they were.

Q. Were they made at the appropriate date as shown on the checks?

A. Yes.

Q. Will you tell us generally the payment mechanism, how Helicol was paid by Williams-Sedco-Horn?

[48] A. An invoice would be presented by Helicol to our Lima, Peru, location and would be approved for payment in U.S. dollars and sent to our office in Houston and upon receipt of the invoice, we would make our payment.

Q. What currency was the payment made in?

A. U.S. dollars.

Q. Look at paragraph 8 of the contract between Helicol and Williams-Sedco-Horn.

A. Yes, sir.

Q. Paragraph 8 reads as follows:

'The monthly invoicing will be made up from Helicol to Consorcio, in American dollars, the first ten days of each month in their office in Lima and must be paid by the main office of Consorcio within 30 days following their presentation.'

Where was the main office of Williams-Sedco-Horn?

A. Houston, Texas.

Q. Where were the payments made under the contract?

[49] A. From the Houston, Texas, office.

Q. Was that something that went out under your direct supervision?

A. Yes, sir.

Q. Looking at each of the checks, is your signature on each check?

A. No, sir.

Q. How many of the checks are your name on?

A. They are on most of them. There are other signatures on two or three.

Q. Look at Exhibits 1 through 10, the checks to Rocky Mountain.

A. Yes.

Q. Can you tell us in general the procedure or why Williams-Sedco-Horn, which didn't have a contract with Rocky Mountain, was paying Rocky Mountain?

A. I was advised by Mr. Novak and Mr. Schexnailder to make payment of 10% of the invoice for Helicopter 214B to Rocky Mountain when the invoices were received from Helicol for such helicopter.

Q. 10% or 90%?

A. Excuse me; pay 90% to Rocky Mountain and 10% to Helicol.

[50] Q. What was your understanding of the relationship between Rocky Mountain and Helicol?

A. I understood that there was a contract between Helicol and Rocky Mountain whereby Helicol rented the Helicopter 214B from Rocky Mountain.

\* \* \*

[52] Q. "What kind of invoice are you talking about, who prepared it?

A. It would be an invoice for hours the helicopter was flown during the month.

Q. Who prepared the invoice?

A. The invoice would be prepared by Helicol and we were invoiced at our Lima office.

Q. Did you ever receive a Rocky Mountain invoice?

A. No.

Q. Why were the payments made in American dollars rather than the currency of Peru and Colombia?

A. I would imagine due to the stability of the dollar as compared to the Peruvian sol.

Q. You had mentioned to me earlier about the inflation of the Peruvian sol.

A. The reason you would want dollars is because the Peruvian sol when I first went to Houston was 38.38 per dollar. It is now 145 per dollar.

Q. While you were in Houston at the offices of Williams-Sedco-Horn, did you ever receive any communication from someone who said they were a representative of Helicol?

[53] A. I recall a telephone call two or three times from whom I presumed to be a woman in Los Angeles dunning me for collections of the Helicol invoices.

Q. Let's go back so I can understand what you told us. Who called you and where were you when you were called?

A. I was in Williams-Sedco-Horn office in Houston.

Q. How did that person identify herself?

A. I forget her name but she acted as a representative of Helicol and wanted to make collection of the invoice which we hadn't paid or we say at times would not have received the invoice from our Lima, Peru office.

\* \* \*

BY MR. GOFORTH (COUNSEL FOR HELICOL)

[56] Q. Did I understand you to say in accordance with the contract there was no payment ever made to Helicol to any Houston or Texas bank?

[57] A. That is correct.

Q. And in accordance with the contract there was no invoicing by Helicol to you in Houston?

A. I can't answer as to the contract, but we were not invoiced in Houston.

Q. You were invoiced in Lima, Peru, where the work was going on?

A. That is correct.

Q. This woman or whoever it was that called you, was it the same woman every time, or could you tell?

A. I thought it was.

Q. You couldn't really tell?

A. I can't recall.

Q. She was calling long distance? That is the one thing you are sure of, I guess?

A. Yes, sir.

Q. She wasn't calling from Houston?

A. That is right.

Q. Did she tell you she was calling from where?

A. Los Angeles.

Q. She told you that?

A. Yes, sir.

[58] Q. I don't guess you had any reason to believe that she was calling from anywhere in Texas?

A. No, sir.

Q. You don't know of any Helicol office in Texas, do you, sir?

A. No, sir.

Q. You don't know of any representative in Texas of Helicol?

A. No.

Q. Now this mysterious Helicopter 214B you were talking about, tell me the basis of your understanding with regard to this Helicopter 214B. Were you just told about it, everything you know were you told about it by Mr. Novak?

A. Yes."

Ending with line 22, p. 14, and beginning on p. 16, line 12:

Q. "What sort of arrangements were there between Williams-Sedco-Horn and Rocky Mountain?

A. None.

Q. You paid Rocky Mountain?

A. Yes.

[59] Q. In Denver or Provo?

A. In both locations.

Q. And you said as a result of invoices you received at the office in Lima?

A. And received at our Houston office.

Q. From the Lima office?

A. Yes.

Q. From your people in Lima?

A. With the Helicol invoice.

Q. That was received from your people in Lima?

A. Yes."

\* \* \*

[Testimony of Francisco Restrepo]

MR. GOFORTH (COUNSEL FOR HELICOL)

[62] Q. Mr. Restrepo, would you state your name for the record, please, sir, and spell it, if you would?

A. My name is Francisco Restrepo, R-e-s-t-r-e-p-o.

Q. Mr. Restrepo, what is your address, sir?

A. My address is Calle Cententa 70 No. 6-76, Bogota, Colombia.

Q. Are you a citizen of Colombia?

[63] A. Yes.

Q. Have you lived in Colombia your entire life?

A. Yes.

\* \* \*

Q. By whom are you employed, Mr. Restrepo?

A. By Helicol.

Q. What is your position with Helicol?

A. Manager.

Q. Tell us, if you will, what responsibilities you have as manager of Helicol?

A. I have to take care of the organization of the whole business of the company.

[64] Q. Do you understand what chief executive officer is in the United States in the corporate terminology of the United States?

A. Yes.

Q. Are you the chief executive officer of Helicol?

A. I may say so.

\* \* \*

[64] Q. Tell the Court if you would, Mr. Restrepo, what Helicol does?

A. We provide helicopter service for oil and construction companies. We do some spraying and we also provide maintenance services for third parties.

[65] Q. Before we go any further, Mr. Restrepo, do you know Mr. Jorge Gonzalez?

A. Yes, very well.

Q. Is he knowledgeable with regard to the affairs of Helicol?

A. Very well.

Q. Mr. Restrepo, in what country does Helicol operate?

A. Besides Colombia, Ecuador, Peru, some work in Brazil and Nicaragua.

Q. Has Helicol ever performed any work in the United States?

A. No.

Q. Has Helicol ever entered into a contract for the performance of any work in the United States?

A. No.

Q. Does Helicol have any offices in the United States?

A. No.

Q. I know this is a part of it, but I want to get it on the record, does Helicol have any offices in Texas?

A. No.

[66] Q. To your knowledge, has Helicol ever had any offices in Texas?

A. No.

Q. Has or does Helicol own any property in Texas?



A. No.

Q. Does Helicol have any agent for process in Texas?

A. No.

Q. Mr. Restrepo, are you familiar with Avianca, Inc.?

A. Yes.

Q. To your knowledge, does Avianca, Inc., have an office in Texas?

A. Yes.

Q. Does it have an office in Houston?

A. Yes.

Q. Is that office in Houston an agent for service or an agent for any purpose of Helicol?

A. No.

Q. Has the office in Houston, I believe it's at 2990 Richmond, ever performed any functions for Helicol?

A. No.

[67] Q. Have they ever purchased any parts for Helicol?

A. No.

Q. Has that office ever transferred any money to any company for Helicol?

A. No.

Q. Has it ever participated in any fashion, to your knowledge, in the purchase of helicopters from Bell Helicopter?

A. No.

Q. Mr. Restrepo, were you employed as general manager of Helicol during the period of time that Helicol performed its contract with Williams-Sedco-Horn in the Amazon Jungle?

A. Yes.

Q. Tell me what Helicol's responsibilities were with regard to that contract, if you will?

A. To provide helicopters for the needs of Williams in the construction of pipeline.

Q. What sort of pipeline was it?

A. It was North Peruvian Pipeline and it was built to move the oil from the jungle up to the Pacific Coast.

\* \* \*

[68] Q. Was the contract executed in Spanish?

A. Yes.

Q. Was the contract executed in English?

A. No.

Q. Is there an English contract?

A. No.

Q. All right.

MR. GOFORTH: So, Your Honor, there is only one contract.

THE COURT: Is there a translation of it?

MR. GRAHAM: There is a Berlitz translation. Since we have got an interpreter here, I don't think there's any—

THE COURT: Is the Berlitz translation attached to the contract?

[69] MR. GRAHAM: It's not. It was attached to interrogatories to the plaintiff asking him if it was a true translation. They said yes, generally.

THE COURT: Let's go ahead and put them both in.

\* \* \*

[70] Q. Mr. Restrepo, I would like to show you what has been marked for identification as Exhibit No. 3, and ask you to identify that if you can, please, sir?

A. The last page here—

Q. The last page is missing, sir. That's the reason I want to show you what has been marked as Helicol No. 1, which Mr. Graham gave me, and ask you if you would look at the last page and see if that appears to be the last page of the document?

A. No. This is not the last page. The signature—it looks like the contract was signed between Williams-Sedco-Horn and Helicol.

Q. Who signed the original contract, I believe dated—what was the date of the original contract, sir?

A. As I recall it was the 11th of November, 1974.

Q. All right. Who signed that in behalf of Helicol?

A. Lawyer who represents Helicol in Peru, the name Gonzalo Garland Iturralde.

[71] Q. Who signed for Williams-Sedco-Horn?

A. Gerald Riga.

Q. Is Mr. Riga located in Peru?

A. Used to, yes.

Q. Do you know what his job was?

A. No. I understand he was transferred from there.

Q. What was his job in 1974 when he signed this?

A. He was responsible for the construction of pipeline in behalf of Williams-Sedco-Horn.

Q. Now, who was Dr. Gonzalo Garland who signed for Helicol?

A. He is a lawyer of Helicol in Peru.

Q. Where was this signed and executed?

A. In Lima, Peru.

(An instrument was marked Helicol No. 2 for identification.)

Q. I show you what has been marked as Helicol No. 2. I think that should not be marked Helicol No. 2, but it is. Have you ever seen that?

A. No. It's my first—what is this, it's a translation?

[72] Q. Yes. A translation by Berlitz Translation Service. You say you have never seen it?

A. No.

Q. You can't identify that?

A. No.

Q. All right. This contract, Mr. Restrepo, why was it executed for Helicol by a lawyer in Peru, can you tell the Court that?

A. Because it has to be done according with the Peruvian laws.

Q. The contract had to be executed in accordance with Peruvian laws, is that what you said?

A. Yes.

Q. Which Peruvian governmental agency handled the contractual negotiations?

A. The Peruvian Air Force.

Q. Did they participate in the writing of the contract?

A. Yes, they have to approve the contract.

Q. Do you recall who approved the contract and what part they played in the contract?

A. The man in charge in Peru is the Group Three Commander and I don't recall exactly who it was at that time, but maybe Colonel Salater, maybe, or there are several different commanders at Group Three.

[73] Q. Did he actually approve the contract?

A. I have to approve it. They have to see the whole contract.

(An instrument was marked Helicol Exhibit No. 3 for identification.)

Q. (By Mr. Goforth) All right. It's something up here on the left top at the left of Helicol No. 3. Do you recognize that insignia, sir?

A. It is the official papers of Peru.

Q. So the contract even had to be printed on official papers of Peru?

A. Yes, sir.

Q. Did you participate, Mr. Restrepo, in writing this contract?

A. Yes.

Q. Had you had any prior dealings with Williams Construction Company? By you, I mean Helicol or Williams Brothers Construction Company.

[74] A. What did you say?

Q. Had you had prior dealings or prior contracts with Williams Brothers?

A. Yes.

Q. Do you know where Williams Brothers is headquartered, sir?

A. Yes, in Tulsa, Oklahoma.

Q. Did you have what you considered to be a good relationship with Williams Brothers?

A. Yes.

Q. Did you know some of their officers and employees?

A. Yes.

Q. Where had you done work for Williams Brothers?

A. In Colombia and construction on the Trisalian Pipeline between the Corito Field and Pomaco, which is a Pacific port.

And later on in Ecuador, the construction of the Trans-Peruvian Pipeline — Trans-Ecuadorian Pipeline, excuse me.

Q. Had you ever done any work for Williams Brothers or Williams Construction Company in Texas?

A. No.

Q. Had you ever done any work for them in the United States?

[75] A. No.

Q. Just to make it perfectly clear, Mr. Restrepo, this contract was not executed in the United States, is that right, sir?

A. No.

Q. It was not executed in English, is that right?

A. No.

Q. It was not executed in English?

A. No.

Q. Okay. It was executed on November 11, 1974, as evidenced by the contract itself, is that right?

A. Will you explain that question, please?

Q. The contract was executed in November of 1974, is that correct?

A. Yes.

Q. Mr. Restrepo, did you have an occasion in October, 1974, to come to the United States?

A. Yes.

Q. Tell the Court where you came in the United States?

[76] A. I came—I received a call from Mr. George Littlejohn, at that time who was the president of Williams International. He called me to come over to Tulsa to visit him and find out what will be their needs for the job in Peru.

Q. Had you already known Mr. Littlejohn?

A. Yes.

Q. How long had you known Mr. Littlejohn?

A. Back in 1968 or '69.

Q. Had you had previous dealings with him?

A. Yes, for the Transanian Pipeline in Colombia.

Q. Did you consider Mr. Littlejohn to be a friend?

A. Yes.

Q. Do you recall what the date was they called you and asked you to come to the United States?

A. Maybe the—about the end of September, 1974, it was.

Q. How did you come to the United States, by what means of transportation?

A. Through Braniff International, through Miami, connected to Tulsa, Miami, Tulsa flight.

[77] Q. So you went to Tulsa?

A. Yes.

Q. Do you recall the date you arrived in Tulsa?

A. October 2nd.

Q. Is that where Mr. Littlejohn was?

A. Yes.

Q. What did you discuss with Mr. Littlejohn?

A. We—I received a call from some official of Williams telling me that they decide to have a meeting in Houston, so that we will fly in one of the Williams' aircraft from Tulsa to

Houston. So they pick me up early in the morning in my hotel in Tulsa, we flew down to Houston and we had a meeting here.

Q. Who picked you up at the hotel?

A. One of Williams' officials. I don't recall his name.

Q. Was Mr. Littlejohn present?

A. Yes. He flew with us to Houston.

Q. This was a Williams Construction Company jet that you flew down from Tulsa?

A. Yes.

Q. Do you recall about what time it was you arrived in Houston?

[78] A. Early in the morning. We flew from Tulsa down to Houston very early in the morning, seven o'clock, something like that.

Q. Did you have your wife with you?

A. She stayed in Tulsa.

Q. She had flown up to Tulsa with you?

A. She flew to Tulsa with me. She stayed in Tulsa in October 3rd, I would say.

Q. How long did your discussion in Houston last and who was present?

A. Ten to fifteen people was present at the meeting and I deal mostly with Mr. Littlejohn and Mr. Riga.

Q. What was discussed?

A. The amount of capital they may need, the weight of the joints, the pipe, the general terms and technical conditions.

Q. Are you talking about the helicopters themselves, what they needed in the way of helicopters themselves?

A. The size of the helicopter they need to move the pipe.



Q. Was anything else discussed?

A. No. No. They asked me to find out what the delivery date will be for a bigger helicopter, the 214 and I called the Bell factory and that's all.

[79] Q. Mr. Novak, do you know Mr. Novak with Williams?

A. Yes. I didn't have a close relationship with him, but I know him, yes.

Q. He testified in his deposition that you made the deal down here in Houston, that is where you entered into the agreement to—for Helicol to provide the helicopter services, is that right?

A. They called me to discuss the amount and the size of the helicopter, but the deal was already done, like I said, in Peru.

Q. The agreement you are saying was already made?

A. Yes, I say so. Yes. Yes. Because they called me—one operator with Helicol and George Littlejohn called me to come over and discuss the amount of helicopters and the size of the helicopters, but the deal was already done in Peru with George Littlejohn and Riga.

Q. In other words, the agreement between Williams and Helicol was already made?

[80] A. My impression, they want me to come over and to meet the others, the members of their company.

Q. So they wanted you to come over here so that they could introduce you around?

A. To meet the officials of the other Sedco-Horn, because he was very familiar with Williams at that time.

Q. Was there anything said at all about you acting for or getting additional work anywhere in the world when you were here in Houston on that visit?

I don't think I made it very clear. I'm not sure anybody that spoke perfect English could understand that.

Did you solicit or ask for additional business of any sort of kind of Williams or Williams-Sedco-Horn when you were here in the United States on that visit?

A. No.

Q. Was anything discussed other than the details of the type helicopters and that sort of thing that you have already testified to?

A. No.

Q. Mr. Restrepo, tell the Court, if you will, where this contract was to be performed, where were you supposed to do the helicopter work?

[81] A. In the Amazon-Peruvian Jungle.

Q. Was it to be performed anywhere other than in Peru?

A. No.

Q. Do you know whether or not Williams-Sedco-Horn had any operations anywhere other than Peru?

A. They have got operations in Colombia and Ecuador, as well as—I know nothing else.

Q. Are you talking about Williams or are you talking about Williams-Sedco-Horn?

A. Oh, Williams-Sedco-Horn only in Peru.

Q. You're speaking of Williams, weren't you?

A. Yes.

Q. Williams, of course, has had other jobs?

A. Yes.

Q. But this is the only job that you're aware of that Williams-Sedco-Horn had?

A. Yes.

Q. Where did you get paid for your services?

A. We invoiced in Peru and they pay us through our bank.

[82] Q. So you demanded payment in Peru?

A. In Peru, yes, sir.

Q. You didn't write an invoice and send it to Houston?

A. No.

Q. After you invoiced in Peru, I guess you forgot about it until you were paid?

MR. GRAHAM: I am trying to be patient, but I have got to object to Mr. Goforth testifying.

THE COURT: The form of the question is bad. I sustain the objection.

MR. GOFORTH: Yes, Your Honor.

Q. (By Mr. Goforth) Let me ask you this: How did Williams-Sedco-Horn respond to your demand for payment in Lima?

A. We send the invoice and according to the terms of the contract, they send us a check back. They deposit the amount in our bank.

Q. Which bank are you talking about?

A. We are talking about the Bank of America and the Bank in Panama or here, I don't recall exactly where.

[83] Q. You said here?

A. Here in the New York branch of Bank of America.

Q. Was there any payment ever made to any bank in Houston?

A. No.

A. Was there any payment ever made in any bank in Texas?

A. No.

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Q. Mr. Restrepo, just let me ask you a few more questions, sir, just for the purposes of clarity.

Do you know of any other Avianca, Inc., offices in Texas other than the Houston office?

A. No.

Q. If there are any, if there were any offices in Texas, have Avianca, Inc., ever served as an agent in any fashion for Helicol?

A. No.

Q. They have never done any work for Helicol at all?

A. Never.

Q. They have never transmitted any invoices?

A. No.

[84] Q. Never transmitted any parts?

A. No.

Q. Never served as go-between, between Helicol and any prospective client?

A. No.

Q. Anything like that.

Mr. Restrepo, is Helicol owned primarily, I think, ninety-four percent by Aereovias?

A. Yes.

Q. Is it in any fashion a branch or a division of Aereovias?

A. No. It's an independent company.

Q. Does it perform all of its own functions administrative and management functions?

A. Yes.

\* \* \*

MR. GRAHAM (COUNSEL FOR WILLIAMS-SEDCO-HORN)

[86] Q. Mr. Restrepo, my name is Mike Graham, I am the lawyer for Williams-Sedco-Horn.

I will show you a document which we will number later that is a promissory note containing Bell Helicopter records.

I wonder if you can identify the signature on that promissory note.

I will represent to you that that is the promissory note for the helicopter that crashed. Is that your signature?

A. Yes.

Q. All right. Whose signature is down below yours?

A. Mr. Pretelt, Sabas Pretelt.

Q. Who is he?

A. He was executive vice-president and later president of Avianca.

Q. Avianca?

A. Aereovias Nacionales De Colombia.

Q. Do you read English well?

Let me read this into the record about what the president of Avianca-Aereovias signed:

"For value received, Colombia, as primary obligor(s) hereby unconditionally guarantee(s) the prompt payment of principal and interest on the foregoing promissory note when and as due in accordance with its terms, and hereby waive diligence, demand, protest or notice of any kind whatsoever, et cetera, et cetera, et cetera."

Isn't it true, Mr. Restrepo, that Aereovias guaranteed your payment obligation when you purchased the helicopter that crashed?

[87] A. Yes.

Q. There are some tie-ins between Aereovias and your company, one of which they guaranteed your purchase of helicopters?

A. I may say yes. It is a guarantee, but we pay for the guarantee. We pay Avianca for their support in several respects besides in financing aspects.

Q. Tell me about Avianca, Inc. Mr. Gonzalez, when his deposition was taken, couldn't tell us what they were or what they did. Do you know?

A. I know the assistance of Avianca, I know the relationship between Aereovias and Avianca. I am not familiar with the organization at all.

[88] Q. Do you know Avianca, Inc., the subsidiary of your parent company, has an office here in Houston?

A. Yes.

Q. But you don't know what Avianca, Inc., does at all?

A. I know they serve Aereovias, but I have no relationship with Avianca, Inc.

Q. Tell me a little more about your company, who your primary customers are.

A. Oil customers.

Q. Which oil companies?

A. Several oil companies, Texaco, Mobil, Gulf, Superior Oil, Occidental, several.

Q. Amoco?

A. Amoco.

Q. Exxon?

A. Exxon, yes.

Q. Are you aware that all of those companies are located primarily in Houston?

A. I don't know. I have no idea. I deal with them in Colombia and other countries. I have no idea where they stay. I sign the contracts in Colombia.

[89] Q. Is it true your company is in the primary business of providing helicopter services to American oil companies?

A. It's service to any company. We serve oil companies, fresh oil companies, any other company.

Q. Do you currently have operations in Peru?

A. Yes.

Q. What are you doing in Peru now?

A. Actually no, we finished the contract.

Q. You don't have an office in Peru now?

A. No, not any more.

Q. You don't have any plans to be in Peru in the foreseeable future, do you?

A. Maybe so, I don't know.

Q. You don't have a deal cooking right now that is going to put you in Peru tomorrow or next week or even next year?

A. Not now, no, I don't foresee any possible jobs in Peru.

\* \* \*

[94] Q. I just want to know who wrote the answers.

Let's move towards your contract with Williams-Sedco-Horn. You are aware, sir, that the contract was with an entity called Williams-Sedco-Horn?

A. Yes.

Q. It wasn't a contract with Williams?

A. No. Williams-Sedco-Horn.

Q. The deal—you were aware that the contract had to be approved by Williams and by Sedco and by Horn?



A. I don't know. Mr. Riga signed the contract in behalf of the name of Williams-Sedco-Horn. I have no—not familiar with the arrangement Williams and Sedco-Horn did have.

Q. When you came to Tulsa, you talked with Mr. Littlejohn?

[95] A. Yes.

Q. Mr. Littlejohn is dead now, are you aware of that?

A. Yes.

Q. Did Mr. Littlejohn tell you in your meeting at Tulsa that he could only speak for Williams?

A. No. We had no meeting in Tulsa at all. We come over from Tulsa to Houston and the meeting was here.

Q. Are you telling us that there were no negotiations at all in Tulsa?

A. No.

Q. You simply got on an airplane, landed in Tulsa, then came straight to Houston the next day?

A. Yes.

Q. What was your understanding of why you were going to Houston?

A. Because George Littlejohn asked me to do that.

Q. How did you go to meet in Houston?

A. Some other persons from the consultant, whatever you call.

[96] Q. You were aware that the manager from Williams, from Sedco and Horn and their assistants were all meeting in Houston, were you not?

A. For Mr. George Littlejohn called me to Colombia and asked me to come to Tulsa, which I did.

Q. Why did he ask you to come to Tulsa?

A. Because he want to discuss with me, talk with me about the amount of helicopters and the size of helicopters they may need.

Q. This was in Oklahoma?

A. Yes.

Q. The contract was signed in Lima in November?

A. Yes.

Q. Now, earlier in your testimony, did you say that the deal was actually made in September?

A. No. Mr. Littlejohn called me about the end of September. I have right here—October 2nd.

Q. So you came to Tulsa for the purpose of—did you have a deal at that time?

A. I may say so, yes.

[97] Q. When did you have the deal?

A. A few days before, because George called me and told me that he was—he want us to do the job.

Q. He called you on the telephone?

A. Yes.

Q. In September?

A. At the end of September, yes, and he asked me to come over Tulsa to meet the other people that I never knew and he asked me to come with him in his own plane to Houston.

Q. But you came from Colombia to meet Mr. Littlejohn to talk about a contract, about making a contract?

A. I may say it was a deal already, because he asked me to come over and discuss the amount and the size of the helicopter and the technical matters of the helicopters.

Q. Back in September when you first had your understanding of the deal, were you aware that the deal was going to be between Williams-Sedco-Horn or just Williams?

A. I have no information about the relationship between Williams-Sedco-Horn at that time.

[98] Q. Maybe you misunderstood my question or I put it badly. In September when you talked with Mr. Littlejohn on the phone about making a deal, who did you understand the deal would be with?

A. With Williams, with Williams, because my relationship had been in Colombia and Ecuador with Williams. I have no way to know the difference between Williams, Sedco and Horn. It's not my business.

Q. You ended up with a deal with Williams-Sedco-Horn?

A. Yes, sir.

Q. You understand that is different than just Williams?

A. Yes.

Q. When did you learn that the deal would be with Williams-Sedco-Horn and not Williams?

A. When they write down the contract. We agreed they put Williams-Sedco-Horn was my first information about that.

Q. When did you first meet someone who you knew worked for Horn?

A. I have—I don't recall anybody I met, anybody from Horn or Sedco.

[99] Q. Did you ever meet a man named Tallichet, who is with Brown & Root and Horn?

A. I don't recall. He—maybe he was at the meeting. I don't recall.

Q. Let me ask you about that meeting. What did you talk about in that meeting?

A. The amount and the size of the helicopter they need.

Q. How long did you talk with these people?

A. For an hour or so.

Q. Who asked you questions?

A. Riga and Littlejohn, some other people that I don't recall his names.

Q. Did some people from Sedco or Horn ask you questions?

A. Maybe so, I don't recall.

Q. Why did you answer their questions?

A. I was there to answer the questions about the use of the helicopter in the pipeline.

Q. Are you telling us that you already had a deal with Williams-Sedco-Horn when you were talking with them about it?

A. I was under that impression, yes.

Q. Do you recall that after the first hour of the meeting, where you had answered their questions, they sent you out of the room?

[100] A. Yes, they send me out of the room, yes.

Q. Did they tell you that was because they were going to discuss whether or not to make a contract with you and to vote on that?

A. I have no idea.

Q. You don't know what went on?

You have to answer out loud.

A. I don't know.

Q. They didn't tell you they wanted to discuss and vote on the contract?

A. They said they was finished with me, nothing else.

Q. Do you recall that after they sent you out of the room they asked you to come back in?

A. No.

Q. How many times were you in the room?

A. Two times. I make a phone call to find out what was the delivery time of the 214 helicopter. The 214.

Q. The 214 was going to be used on this job?

A. They were thinking to use the 214, yes.

Q. Were you instructed to leave the meeting and go call Bell and find out when you could get a helicopter?

[101] A. Yes.

Q. That was something they wanted to know before they made a deal with you?

A. I don't know.

Q. What other of their questions did you answer during this meeting?

A. The size and the capacity and the amount of helicopter that I may have ready to perform the job and when and how.

Q. Did you discuss how you were to be paid?

A. No.

Q. Why did you not want to be paid in Peru?

A. We don't care, because we don't have a bank account in Peru and even though we have a permit from the Peruvian Government, we are a Colombia company, have to be paid in our checking account.

Q. You didn't want to be paid in Colombia?

A. Yes. We have to write to receive foreign currency in Colombia.

Q. Well, this contract, you didn't want to be paid in either Colombia or Peru?

A. We had to inform all the Colombian authorities about the amount of dollars we will receive from every country.

[102] Q. This contract, the checks are in evidence, you were not paid in Colombia or Peru, were you?

A. Put in our account.

Q. In New York and in Panama?

A. In New York and in Panama.

Q. How long did you spend in the meeting with the people in Houston?

A. About an hour or so.

Q. When did you leave Houston?

A. That particular afternoon back to Tulsa. My wife was waiting for me at the hotel in Tulsa.

Q. In the meeting, do you recall discussions that Williams-Sedco-Horn needed a helicopter immediately in Peru, that in order to begin the construction a survey had to be performed in late October and that they needed a helicopter within ten or fifteen days in Peru?

[103] A. I don't recall exactly the word immediately, but I guess so. They always work in a hurry.

Q. Do you recall that you were told that the 205 helicopter would have to be on the job in Peru by October 28th?

A. I don't recall exactly the dates, but I think so, yes.

Q. Well, let's do it this way:

Do you recall that they needed the helicopter down there working before a contract would be signed later on in Peru?

A. Had to be accepted in any way by the Peruvian Air Force, have to be authorized by the Peruvian Air Force.

Q. Do you recall they wanted a helicopter down there on October 28th and you promised to have it there and that you promised you would sign the agreement later on, but the first thing was to get the helicopter down there within ten or fifteen days?

A. I may say so, yes.

Q. It's a fact then you were already working on the job before the papers were signed in Peru?

A. With the approval of the Peruvian Air Force, yes. This is a type of letter of intent, something like that.

Q. The later contract was a formality, is that correct?

[104] A. Yes, as always is. It's typical with the oil companies and pipeline companies.

Q. In the meeting in Houston you promised to begin operations within the next few days and in the meeting you agreed on a price, did you not?

A. For the 205, yes.

Q. In Houston you talked money with Williams-Sedco-Horn and you agreed on what the price would be?

A. I never discuss. I provide my rates. My actual rates. That's all.

Q. They said that's fine and you shook hands on it in Houston?

A. I never shake hands.

Q. Do you recall shaking hands and saying, "We have got a deal" in Houston before you left the room?

A. No.

MR. GOFORTH: Your Honor, he's already testified about when the deal was made. Counsel is testifying now.

THE COURT: That's the first time a lawyer ever did that.

[105] Q. (By Mr. Graham) Do you recall in December of 1974 that you asked Williams-Sedco-Horn to provide the financing for the acquisition of the helicopter?

A. Yes.

Q. How was that going to be arranged?

A. They want us to buy a 214 for the movement of the heaviest joints and we was trying to figure out some deal with Mr. Littlejohn, yes.

Q. Did Helicol formally request Williams-Sedco-Horn to give it a letter of credit to buy a helicopter?

A. To perform the job for them, yes.

Q. How did Helicol take its helicopter into Peru. I understand you needed a permit to do that.

A. Yes.

Q. Where did the permit come from?

A. From the—it's a Director of Civil Aviation in Peru and from the Peruvian Air Force both.

Q. Did Williams-Sedco-Horn get those permits for Helicol?

[106] A. No. Helicol did.

Q. Helicol could get a permit like that by itself?

A. Yes, we have to.

Q. Do you have a copy of the contract with you?

I will read from the English if you will work from the Spanish, if it's more comfortable.

Paragraph No. 8 says:

"The monthly invoicing will be made up from Helicol to Consorcio in American dollars the first ten days of each month in their offices in Lima, and must be paid by the main office of the Consorcio within thirty days following their presentation."

MR. PLETCHER: Could we have in the record that this word "Consorcio" has been used several times. My contract refers to Williams-Sedco-Horn.

THE COURT: That's fine. That's what I've been using it for.



Q. (By Mr. Graham) Do you see that paragraph eight?

[107] A. Yes.

Q. You can read English and Spanish now.

Paragraph 8 talks about a Lima office of Williams-Sedco-Horn, and a main office of Williams-Sedco-Horn, does it not?

A. Uh-huh.

Q. Is your understanding of—what is your understanding of where the main office of Williams-Sedco-Horn was?

A. I don't know. At that time I did not know.

Q. Do you know now where the main office of Williams-Sedco-Horn is?

A. I heard today it's here in Houston.

\* \* \*

[109] Q. You are an international businessman, are you not, sir?

A. Yes, basically, yes.

Q. Are you familiar with the restrictions placed upon the import and export of currency from countries like Peru?

A. Yes.

Q. You are aware then that if you were to be paid dollars in Peru, there are some difficulties in getting dollars out of Peru?

A. This still was accepted by the Peruvian officials as this.

Q. You are aware, though, that in the abstract that if you have dollars from Peru there may be difficulty in getting them out?

A. Yes.

Q. In fact, there is a forty percent Peruvian export tax on dollars?

MR. GOFORTH: I object. Counsel is testifying and getting maybes and this and that from the witness.

THE COURT: It's a legitimate question.

MR. GOFORTH: I didn't go into it on direct.

THE COURT: I understand. He's got him on cross, the burden on special appearance, I think, it's germane or at least it's possible it will be.

Go ahead.

[110] Q. (By Mr. Graham) Isn't the reason that the contract called for payment to be made in New York or in Panama a way to avoid having to get the money or getting the money in Peru and not being able to get it out?

A. Yes.

\* \* \*

[111] Q. Did any representative of Helicol ever call Williams-Sedco-Horn in Houston inquiring about invoices?

[112] A. No, not here. We don't have any representative in Houston at all.

Q. I'm not asking whether a Houston representative called, I am asking whether someone from Helicol telephoned Houston asking when the invoices would be paid.

A. I don't recall. No, not directly from my office. No.

Q. What about any of your other employees?

A. Maybe so, I don't know.

Q. It's certainly not out of the question, is it?

A. It's a possibility, yes.

Q. We have heard some testimony about Rocky Mountain. Do you know of a company called Rocky Mountain Helicopters?

A. Yes.

Q. As I understand it, they were a subcontractor under your contract with Williams-Sedco-Horn?

A. Yes, in Peru.

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Q. They supplied a 214 Helicopter?

A. Yes.

[113] Q. That is a Bell Helicopter?

A. Yes.

Q. Comes from Fort Worth?

A. Yes.

Q. How did you become acquainted with Rocky Mountain?

A. The vice-president of that company at that particular time was Mr. Pat Patterson, who used to be a Helicol pilot.

Q. During the project in Peru, a Bell 214 Helicopter was needed, is that correct?

A. Yes.

Q. Helicol did not have a Bell 214 Helicopter?

Q. Yes.

Q. Did Helicol try to find a 214 helicopter?

A. Yes.

Q. Did you try to buy one from Fort Worth?

A. I am trying to lease one from Fort Worth.

Q. How did you try to do that, did you go to Fort Worth?

A. Yes.

Q. Did you personally go to Fort Worth?

A. Yes. I was there. Yes.

Q. And that was to obtain a 214 helicopter?

A. Yes.

Q. For work on the Williams-Sedco-Horn contract?

[114] A. Yes.

Q. And as I understand, Bell did not have one they could give you in time?

A. They decided not to lease the helicopter, so we got together with Rocky Mountain.

Q. Were you introduced to Rocky Mountain by Williams-Sedco-Horn?

MR. GOFORTH: Your Honor, I think he already testified he knew of Rocky Mountain through Pat Patterson, who had been a pilot of Helicol.

A. I am familiar with most of the helicopter companies in the United States.

THE COURT: Overrule your objection.

Q. (By Mr. Graham) Isn't it correct that Williams-Sedco-Horn told you at this time they're only three 214's in existence in the whole world, is that correct, a very small number?

A. Yes.

Q. Williams-Sedco-Horn told you that Rocky Mountain had one, is that correct?

[115] A. Yes.

Q. All right. Now, Williams-Sedco-Horn arranged for you to meet with Rocky Mountain to discuss subcontracting the 214 for work in Peru?

A. Yes.

Q. Now, Helicol was not going to fly the 214, it was going to be flown by Rocky Mountain?

A. Yes.

Q. Helicol was to be paid—was to bill Williams-Sedco-Horn for the time of the Rocky Mountain helicopter?

A. Yes.

Q. There wasn't a contract between Rocky Mountain and Williams-Sedco-Horn that you are aware of?

A. I don't know.

Q. But there was a contract between Helicol and Rocky Mountain?

A. Yes.

Q. Well, what would happen is that Rocky Mountain would fly the helicopter and Helicol would send a bill for that to Williams-Sedco-Horn?

A. And we provide some services for Rocky Mountain. We handled the contract there. We had to get in touch with the authorities and everything else in each portion of the country we handled that.

[116] Q. Your company, Helicol, did not pay Rocky Mountain, did it?

A. No.

Q. Who paid Rocky Mountain?

A. I don't recall exactly what was the deal, but maybe Williams paid Rocky Mountain and we received a portion of the payment.

Q. Williams-Sedco-Horn and the checks are here, the Houston office paid Rocky Mountain for you, is that correct?

A. I don't recall exactly how was the deal. I recall that we received a portion of the payment and we send the invoice according with the information that was in from the field.

Q. You sent an invoice to Williams-Sedco-Horn telling Williams-Sedco-Horn to pay Rocky Mountain for you?

A. Uh-huh.

Q. Is that yes?

A. As I recall, yes.

[117] Q. Williams-Sedco-Horn did not owe Rocky Mountain any money directly, they were acting as your agent for payment?

A. Say it again, please.

Q. Williams-Sedco-Horn did not owe Rocky Mountain any money, because their contract was with your company?

A. Yes.

Q. When they paid Rocky Mountain, they were acting as your agent for payment?

MR. GOFORTH: That is asking for a legal conclusion of a Colombian National.

THE COURT: Overrule the objection.

Q. (By Mr. Graham) When Williams-Sedco-Horn paid Rocky Mountain, they were acting as the agent for Helicol?

A. No, I don't get it.

Q. Let me begin at the beginning.

Helicol owed money to Rocky Mountain?

A. Yes.

Q. Williams-Sedco-Horn did not owe money to Rocky Mountain?

[118] A. Yes.

Q. So when Williams-Sedco-Horn sent a check from Houston to Rocky Mountain, they were doing that for Helicol?

A. They were accepting some instructions for the payment, that's all.

Q. They paid Rocky Mountain the amount of money Helicol told them to pay Rocky Mountain?

A. Yes. Yes.

Q. Williams-Sedco-Horn did not decide what to pay Rocky Mountain, but it was acting on Helicol's instructions?

A. Yes.

Q. And the payment was a payment on the account of Helicol?

A. Yes.

\* \* \*

[119] Q. I want to show you the one I want to look at, I will show you a document in the deposition upon written questions of Bell Helicopter. It appears to be a Telex No. 273 dated November 5, 1974. It's both in English and Spanish addressed to Mr. Jorge Gonzalez and it reads:

"Hernan De Los Rios Funcionario Helicol Llegara Esa Viernes 8. Hernan De Los Rios, Helicol officer, will arrive there Friday the 8th."

Meaning, I assume, Friday, the 8th of November. Can you tell us who Mr. De Los Rios is?

[120] A. It's De Los Rios is second man in the maintenance activity of Helicol.

Q. Why was he going to Bell Helicopter four days after you had entered into an agreement to provide helicopters for Williams-Sedco-Horn?

A. I don't recall this, the reason of his travel.

Q. Was it related to the contract?

A. I don't recall.

Q. Is it possible?

A. I don't know. We have several people coming to the factory and back for many reasons. There is a possibility, but I don't know. I don't recall exactly.

Q. I understand that all of your helicopters or substantially all of your helicopters are purchased in Fort Worth?

A. Yes.

Q. And you have company people in Fort Worth almost all the time?

[121] A. Not all the time, but often.



Q. When you left the meeting in Houston, did you call—you said you called Bell?

A. Yes.

Q. All right. Is one of the things that you did when you talked to Bell four days earlier or actually the day or a month before this Telex was to make arrangements for Mr. De Los Rios to come up?

A. No. I don't think so, no.

Q. If you can turn with me to a letter I believe you wrote on October 24th of 1974 to Colonel D. Rhodes at Bell Helicopter in Fort Worth. Is that the letter that you wrote?

A. Yes.

Q. In that letter, and I will read it quickly for the Court:

"Our mutual friend, Boris De La Piedra, the Bell representative in Peru, is sending you a 'letter of intent' for the purchase of two (2) Bell 205 A-1 helicopters, for the company we are forming between a group of distinguished Peruvians and Helicol. This letter, in addition to the purpose of greeting you, is also to confirm Helicol's participation in the above mentioned project."

Signed Helicol, by yourself.

[122] A. Yes, it's a good translation, yes.

Q. Is this about within three weeks of your meeting in Houston, does the formation of that company have anything to do with the Williams-Sedco-Horn contract?

A. No.

Q. It's just another deal you had?

A. Yes.

Q. Now, I ask you to turn to a Telex to Bell from yourself on December 4th that states:

"In order to act on creation of Peruvian company and obtain contract, we urgently need confirmation soon as possible delivery date on orders being placed by De La Piedra. Regards."

Signed by yourself.

Is this another contract you had in Peru?

A. Maybe so, yes.

Q. What other contract did you have in Peru?

A. We worked for Occidental Petroleum, Atlantic-Richfield.

[123] Q. On October 19, 1974, there is another telegram to Bell that states:

"Operations seriously affected by lack of chains. We have obligations contracted with oil companies and cannot non-comply. Please ship immediately balance."

MR. GOFORTH: I think that says cannot non-comply.

MR. GRAHAM: Cannot non-reply.

Q. (By Mr. Graham) "Please ship immediately." Signed yourself. Does that have anything to do with this contract?

A. Maybe so, yes. I don't know. I don't know, was the failure on the chains that moved the cable of the helicopter. Maybe it's a possibility that has something to do with the helicopter that we was flying for Williams, but I don't know. Maybe not, because this is October 19th.

Q. There is also a Telex in here trying to lease the 214 December 18th of 1975.

Now, that did have to do with this contract with Williams-Sedco-Horn? That is dated December 18, 1975, asking about leasing a 214. That does have something to do with this contract?

[124] A. Yes.

Q. All right. During the time that you were working for Williams-Sedco-Horn, you were sending Telexes and letters, I assume telephone calls, to Fort Worth trying to locate a 214 helicopter?

A. Yes.

Q. There is one other letter in here, sir, it's dated a little bit later, talking about efforts to set Helicol up as the designated Bell repair facility for South America. Do you recall a transaction like that that Helicol was trying to get itself recognized as the designated repair shop for South America for Bell Helicopters?

A. For Colombia, yes.

Q. That had been something you had been negotiating back and forth with Bell for a number of years?

A. Not directly with Bell. We have a representative in Colombia.

Q. Had you contacted Fort Worth about that?

[125] A. Yes.

Q. I want to ask you, sir, about some answers to interrogatories.

Let me ask you a little more about your relationship with Bell Helicopter. All of your equipment, all of your helicopters are Bell equipment?

A. Mostly, yes.

Q. All of your pilots are trained in Fort Worth?

A. No.

Q. How many of your pilots are trained in Fort Worth?

A. Some and when we buy some new equipment, they train the pilots at the factory. Otherwise we train in our own facility in Colombia.

Q. What about maintenance people, are they trained by Bell, too?

A. Some of them, yes.

Q. Of all of the training that your pilots and maintenance people get from Bell, they get in Fort Worth, Texas?

A. Some of it, because Bell has some groups traveling around and they are representatives Bell's in South America, Colombia, to train all the people.

[126] Q. When we were talking about sending Helicol people back and forth between Bogota and Fort Worth, they were going up to see Bell for training?

A. Will you clarify the question, please?

Q. Let me ask it another way:

As a businessman, isn't one of your strong selling points, you understand me, about when you go into make a contract with an oil company, isn't it one of your selling points the fact that you use Bell equipment and you have factory trained pilots and factory trained maintenance people?

A. No. As a sales—no. No. We use any helicopter the client wants to use. Well, we are not mates, we are not like married with Bell.

Q. It doesn't hurt your business, though?

A. No. No, not at all. I am very pleased with the Bell equipment. But we will be able to operate any other type helicopter.

Q. It's true when you go to negotiate your deal with oil companies, you are very happy to tell them you have American trained pilots?

[127] A. We have our own training facility and our pilots are very well known within the American and European companies.

Q. I want to show you some answers to interrogatories.

What I am referring to specifically, we have asked you some interrogatories about the amount of money that you paid Bell over the last—since 1970.

And this is Interrogatory 9.

THE COURT: Unless it's—you really need it for some specific question for this witness, maybe you ought to read it into the record, if you need to lay a predicate, go ahead.

MR. GRAHAM: What I am getting at, Your Honor, is the numbers in the answer are substantially less than the answer we got from Bell when we asked the same questions. I would like him to explain the discrepancy, if he knows.

[128] Q. (By Mr. Graham) Your company was asked written questions. We asked them.

How much business was done every year with Bell Helicopters and your company.

And your lawyer has prepared a written answer to that.

Do you have any personal knowledge of the preparation or how those answers were prepared?

A. No.

Q. My question was going to be, the answers we got from Bell when we asked the same question, we got a substantially higher number.

Do you have any explanation for that?

A. This is the first time I see this statement.

Maybe some discrepancy, because there are several items that we buy from—we send a bill to Bell and some other manufacturer send it down. They direct the purchase to some other manufacturers. I am guessing. I'm not sure, but I don't know what the discrepancies are.

[129] Q. Would it surprise you to learn that the—can you tell us during the life of the contract in 1976 and '76 the approximate amount in dollars of your purchases from Bell?

A. This is difficult to say, but I guess for spare parts around \$50,000 a month, something like that.

Q. Would it surprise you to learn for the years 1975 and 1976 that Bell records reflect sales to Helicol in excess of \$1,120,000?

A. Maybe so, yes, including equipment. Yes, I may say, in spare parts around fifty thousand a month in spare parts and besides the equipment that we are buying, yes, sir.

Q. Roughly averages about a \$100,000 a month?

A. Maybe so, including the new helicopters. Yes.

\* \* \*

[130] Q. Mr. Restrepo, also in the answers to interrogatories we asked your lawyers to tell us the names of Helicol people who were in the State of Texas during the last, I believe, five or six years. Your name is listed in the answer to interrogatories, that you were here December 11, 1975; September 12, 1973; and April 5, 1971, each time doing business with Bell Helicopters.

A. Buying equipment, yes.

Q. Did you talk to somebody about how to answer that interrogatory, did somebody ask you when you were in Texas so they could make this answer?

A. No. This is the first mention I hear of it. Maybe I have the record in the company. I don't know.

[131] Q. My problem is that the answers about the number of times you were in Texas leaves out the meeting with Williams-Sedco-Horn. It's just not here. It happened in October of 1974. Do you have an explanation for why that meeting is left out when it got you here on three other dates?

A. No. Can you explain the question?

Q. We asked your company to tell us the dates its representatives were in Texas and they told us three different dates.

A. Who is "they"?

Q. Whoever prepared the answers on behalf of your company to our interrogatories. They do not list the meeting that you had with Williams-Sedco-Horn on October 4, 1974.

A. How was the question to the company?

Q. The question was from January 31, 1970, through the date of your answers to these interrogatories, please identify each and every time an employee, agent or representative of Helicol has visited the State of Texas and with regard to each please state the following, date, name and address of individual, reason for visit.

And part of the answer says Francisco Artego Restrepo, with your address, December 11, 1975; September 12, 1973; April 5, 1971, each time with business with Bell Helicopter.

And I want to know why in the answers to interrogatories we were not told about your trip to Houston and the meeting with Williams-Sedco-Horn.

[132] A. I don't know. Officially I was invited to come to Tulsa. Maybe it's not in the records.

Q. Do you know who prepared the record?

A. Jorge Gonzalez.

\* \* \*

[133] Q. Can you tell me what kind of training your people got at Bell, were they given training to become instructors for helicopter pilots so they could come back to Colombia and teach other people how to fly helicopters?

A. Most of our pilots come from the Colombian Air Force and they provide very good training, mostly in Bell equipment. So it's not a need to send the pilots out here and we specialize in some of our services that the factory cannot teach us how to do it, besides the general information. So we have our own instructors and we train our own people there. As soon as we buy a new equipment, we have the right to fly the helicopter for

some time and receive some instructions. This is part of the deal when you buy helicopters.

Q. Is that included in the purchase price of the helicopter?

A. Yes.

Q. But you also paid Bell for additional training?

[134] A. Not in pilots, for mechanics maybe. So all the major components, things like that.

Q. Do you pick up your helicopters at Fort Worth at Bell?

A. Yes.

Q. Do your pilots fly up here to Fort Worth, then fly the helicopter back?

A. Yes.

\* \* \*



MR. PLETCHER (COUNSEL FOR RESPONDENTS)

[134] Q. What I want to be sure about is that we can rely upon the information that is already before the Court in the form of written questions to your company.

For example, there is a list of some thirty-three business trips to the State of Texas that did not include your trip here to secure the contract.

Now, do you know of any other business trips that Helicol people made to Texas for any reason at all, other than those answered in the written questions?

[135] A. I don't know. I may say everything is there. Maybe it's some discrepancies.

Q. So far as you can tell us, as the general manager of that company, we can rely upon those answers.

A. Yes, sir, of course.

Q. All right. With reference to the provision that Helicol was supposed to carry during the existence of the Williams-Sedco-Horn contract, that you were supposed to carry and you agreed to maintain the insurance policies which at present protects its own civil responsibilities in conformity with the terms and conditions and stipulations of such policies to those which the parties remit and that included four million dollars of insurance in the United States dollars for bodily injury to third party passengers and damage to third parties.

Now, is there such an insurance policy?

[136] A. Yes.

Q. Is it here in this courtroom, to your knowledge, that is, do any of your representatives have that policy?

A. I don't know.

Q. But that policy does exist and it does provide in accordance with the contract what it's supposed to?

A. Yes.

Q. Can you tell us what company wrote that policy?

A. Compania Sebulas.

Q. That company provides for four million dollars in United States dollars?

A. Yes.

Q. And that policy is available to us and you will make it available?

A. Yes, I think so.

Q. I want to know if you agree, we already have the Court telling your lawyer to give it to us, but we don't have it, but you as the general manager of the company will do so?

[137] A. Yes.

Q. Okay. Now, will you tell us, and I am nearly through, tell us, please, sir, what percentage of the equipment of Helicol is secured from Bell Helicopter in Fort Worth, Texas?

A. What is the meaning of secured?

Q. Sir, something bought or contracted for with Bell, I'm trying to find out what percentage of your fleet is Bell Helicopter.

A. Almost ninety percent.

Q. Ninety percent of it comes from Fort Worth, Texas?

A. Ninety percent comes from Bell. We bought some equipment from Augusta Bell, which is a European built helicopter.

Q. A Bell?

A. It's through the—it's Augusta Bell, built by Italian firm, the name Augusta and we have some Sigorskis.

Q. Is it accurate that ninety percent of the helicopter fleet is Bell Helicopter equipment?

[138] A. I may say so, yes.

Q. Is it accurate that that fleet is maintained through purchases from Bell Helicopter Company in Fort Worth?

A. Yes, through their representative in Colombia, of course.

Q. I understand that, but you get them out of Fort Worth, you buy them up in Fort Worth, is that correct?

A. Yes.

Q. That is where your contracts with Bell are made and executed are in Fort Worth, Texas?

A. We sign a purchase order. We don't have any contracts with Bell.

Q. The only contact you have had with Bell is buying equipment and buying parts and paying them in excess of four million dollars in the past six years?

MR. GOFORTH: I object. He thinks everything was bought and paid directly at Fort Worth and that is not the case, it's not the testimony.

Q. (By Mr. Pletcher) Let's find out about that, if they're still squabbling over it.

Do you dispute that four million dollars' worth of payments were made to Bell Helicopter Company in Fort Worth, Texas, from 1970 through 1977?

[139] A. What is dispute?

Q. I'll repeat it. Do you deny—do you understand deny? Agree?

Are you in accord with this statement, that Helicol paid to Bell Helicopter in Fort Worth, Texas, four million dollars, more or less, from 1970 to 1977?

A. This is a possibility, yes.

Q. You say it's a possibility?

A. I mean I don't know exactly the figure.

Q. You would accept the official records of the Bell Helicopter Company in Fort Worth, Texas, would you not?

A. If I had the chance to see it, yes.

\* \* \*

[Testimony of Robert Greenough]

MR. KUYKENDAHL (COUNSEL FOR WILLIAMS-SEDCO-HORN)

[143] Q. What is your name, sir?

A. Robert Greenough.

Q. What is your address?

A. 5425 South Gillette, Tulsa, Oklahoma.

Q. How are you presently employed?

A. I am employed by Williams International Services as a manager of the department that controls cost progress and forecasting.

Q. Were you with Williams International in October and November of 1974?

A. Yes, sir.

Q. What capacity did you have with Williams International at that time?

[144] A. At that time I was cost and progress and also estimating.

Q. Did you have anything to do with the Williams-Sedco joint venture?

A. I was not directly employed by the joint venture. My function there was as Williams representative, to track the project, as far as the costs and progress on the job.

Q. What project are we talking about? Just briefly describe to the court what Williams-Sedco-Horn were doing in Peru.

A. Petro-Peru, the national oil company, put out to International a tender for the construction of a pipeline from the producing field in the Amazon Jungle across the Andes to the Pacific Ocean at a proposed port called Baivor. The whole line was approximately 850 kilometers.

The bid documents split the line into four construction sections, which were to be bid separately. Williams did submit individual bids on each individual section.

Q. Did any of the other parties submit bids on each individual section?

A. To my best recollection there were four international contractors—no, five, one of which was not responsive to all sections. Four ended up submitting bids on all four sections.

[145] Q. Did Horn and/or Sedco submit bids on four sections?

A. Yes, individually.

Q. All right. Who won out in the bidding contest?

A. There was no individual winner, as far as Petro-Peru was concerned. After the bids were submitted, they were requested that certain of the bids be resubmitted in a joint bid, because they were concerned that they needed a large enough organization to construct this with a large enough backing and did not feel each individual one had sufficient backing so they were requested, all of them, to get together and submit a single bid.

Q. Had Williams-Sedco-Horn had a joint venture before that you know of?

A. Not those three partners. Horn, being a subsidiary of Brown & Root, we have worked with Brown & Root previously in Iran.

[146] Q. What was the reason that Williams-Sedco-Horn got together on this, was it a voluntary commitment by the parties or was there some—

A. It was at the request of Petro-Peru.

Q. Would the contract have been granted to any individual party?

A. No.

Q. It had to be a joint deal?

A. Yes.

Q. All right. Did you go down to Peru yourself during the time of these negotiations?

A. Yes, sir.

Q. What was your function in Peru?

A. To assist as necessary in the technical language of the contract, re-visioning estimates if quantity of work changed, advice to the chief negotiators.

\* \* \*

[149] Q. Would it be accurate that in the latter part of September, Williams started looking for helicopters?

A. Yes.

Q. Did you contract Helicol yourself?

[150] A. Not personally, no.

Q. Do you know who from Williams International or Williams-Sedco-Horn did contact Helicol?

A. Mr. Littlejohn, who at that time was our president.

Q. What function did Mr. Littlejohn have in the overall joint venture?

A. He was the chairman of the management committee.

Q. Who was on the management committee besides Mr. Littlejohn?

A. From Horn-Brown & Root, was Delbert Ward; Mr. William Bouyier from Houston contracting for Sedco.

\* \* \*

[151] Q. But, as I understand from Mr. Restrepo, and from your testimony, Williams had been involved in some type of venture with Helicol in Colombia?

A. Oh, Helicol?

Q. Yes.

A. Yes, Williams has on at least two previous occasions used them.

Q. All right. What had been Williams' experience with Helicol?

[152] A. Our prior experience had been very good.

Q. Did you have any conversations with Mr. Littlejohn concerning the helicopter prior to the time Mr. Restrepo came to Tulsa?

A. We had discussed the fact that we would need helicopters and from our previous experience with Helicol, Mr. Littlejohn indicated that he would recommend them to the other members of the joint venture.

Q. Did Mr. Littlejohn ever indicate to you prior to Mr. Restrepo coming to Tulsa that he agreed with Mr. Restrepo to give him a contract?

A. Not to my knowledge.

Q. Did Mr. Littlejohn have any authority to enter into a contract with Mr. Restrepo on behalf of the joint venture?

A. No, sir.

\* \* \*

[154] Q. With regard to entering into a contract with the helicopter operator, what was the limits of your authority in accordance with the contract?

A. The way I would read that would be \$100,000.

Q. Did the contract with Helicol—was it anticipated to exceed \$100,000?

[155] A. Yes.



Q. Did Mr. Littlejohn and you consider it necessary to have a meeting with the joint partners in order to obtain their agreement?

A. Yes, that would have to be done.

Q. Could a contract be made before that agreement was obtained?

A. No.

\* \* \*

[158] Q. All right. Now, did Mr. Restrepo subsequently arrive at your office or Williams' office in Tulsa?

A. Yes.

Q. Was there a meeting held in the Williams office in Tulsa?

A. Yes, sir.

Q. Who was present at the meeting with Mr. Restrepo?

A. Mr. Littlejohn, Dentez and one other person I cannot remember who it was.

Q. What was discussed at that meeting?

A. The general requirements of helicopter service.

Q. What was the date of that meeting?

A. I believe it was the 2nd of October. It was the 2nd or 3rd of October.

Q. 1974?

A. Yes, sir.

Q. Did Mr. Restrepo make any calculations at the meeting?

[159] A. Yes, sir. He worked out what approximate prices would be.

Q. Were any representations made to Mr. Restrepo that he had a deal at that meeting?

A. No, sir.

Q. Was Mr. Restrepo informed he had to come to Houston at that meeting?

A. Yes, sir.

Q. Was he told why he had to come to Houston?

A. Yes, sir.

Q. What was he told?

A. That this is a joint venture contract and that we as Williams could not unilaterally make the contract with him.

Q. Now, the meeting in Houston was October 3rd or 4th of '74, I believe on Friday, right?

A. Yes, sir.

Q. In preparation for the meeting in Houston, did you prepare a agenda for that meeting?

A. Yes, sir.

Q. I show you a copy which you brought from Tulsa. Would you identify this, please?

A. Yes. This is a Xerox copy with some notes of the agenda that was prepared for that meeting.

[160] Q. Did you obtain this from your file in Tulsa yesterday?

A. Yes, sir.

(The instrument referred to was marked Greenough No. 2 for identification.)

Q. (By Mr. Kuykendahl) When was the agenda prepared and where?

A. It was prepared in Tulsa within the three or four days prior to that meeting, based upon prior discussions and various things that we knew we had discussed.

Q. This agenda is not limited just to helicopter items, is it?

A. No, sir, it covers a broad spectrum.

Q. Did you attend the meeting in Houston?

A. Yes, sir.

Q. How did you arrive in Houston?

A. We flew down on the Williams Company corporate jet.

Q. Who was in company with you?

A. Mr. Littlejohn, Mr. DePrize, Mr. Marvin Jones, I believe Mr. Duffy, Mr. Thompson, Mr. Restrepo and two other guests.

[161] Q. Where was the meeting in Houston held?

A. It was held in the board room of Houston Contracting Company on Buffalo Speedway.

Q. Now, the agenda indicates the meeting at the Brown & Root office. Was there a change?

A. Yes, sir. That was the original meeting location, but it was more convenient to use the Houston offices.

Q. What relationship does Houston Contracting have to the joint venture?

A. They are a subsidiary, as far as I know, of Sedco, who was the signor of the contract.

Houston Contracting is their construction division.

Q. At the meeting with Mr. Littlejohn representing Williams—

A. Yes, sir.

Q. —yourself and Mr. DePrize, I assume?

A. And Mr. Thompson from personnel. I believe Mr. Duffy was there also.

Q. Mr. Ward and Mr. Tallichet from Brown & Root?

A. Yes, sir.

Q. Who was from Sedco?

[162] A. William Brillier, E. J. Laboard, a man by the name of Noel Lott, who was to be one of the superintendents. I'm not sure which company he was with originally.

Q. Mr. Greenough, I would like to refer you to your agenda and ask you to note that there is certain items typed in and there is certain pencil writings. Could you explain the distinction or the difference?

A. The typed items were the items that would come up for discussion. The penciled items, I cannot identify the handwriting with pencil notations made during the meeting.

Q. And on item No. 3 concerning aircraft requirements, there is pencil notations. Would you read to the Court what that says?

A. Do you want me to read the typed and the pencil?

Q. Well, if you would.

A. "Requirements" typed. "Two or three twin Otters on floats". In pencil the number 2 is circled and indicated okay.

The next line is "Four helicopters, 204, 205, 212 size range."

Beneath that in pencil is 1-206 for Section 1, half price, 1200 pound hook, and I believe it says \$220 per hour.

Also one 205 for Section 2 to start 4600 pound hook.

Underneath that 1-205, 28 October; 1-206, 1 January; 1-205, May.

[163] Q. Thank you, sir. What does the notation mean 1-205, 28 October?

A. That indicates the aircraft will be necessary for the survey work.

Q. Was this discussed with Mr. Restrepo in the meeting?

A. Yes, sir.

Q. Did Mr. Restrepo agree in the meeting to provide one 205 by October 28, 1974?

A. Yes.

Q. Was that 205 to be on location?

A. That was the understanding, it would be available for work by then.

Q. Was that 205 to be used in connection with survey?

A. Yes, sir.

Q. It was necessary to do the survey within that thirty day period you have talked about?

A. We had to start, yes.

[164] Q. All right. At this meeting did Mr. Restrepo give you figures and calculations concerning his prices?

A. Yes, sir. One of the notations on there at \$220 an hour would have come from him.

Q. All right. Now, generally what happened in the meeting, what happened, just describe generally what happened in the meeting and Mr. Restrepo's participation in the meeting.

A. For the part that concerned the helicopters, there was discussion as to how many would be required, for what time, what type of service they would be in. And, of course, we were concerned as to the availability and the price.

Q. Was Mr. Restrepo dismissed from the meeting at any time?

A. After he had presented what he would have available and his prices, yes.

Q. Was there any discussion concerning whether this bid should be accepted?

A. After he left the room, yes.

Q. What was the discussion in that regard?

A. The Sedco and Horn personnel had had no previous experience with Helicol. Their previous experience had been primarily PHI, Petroleum Helicopters, so they asked us, Williams, what our previous experience was, how we rated him and so forth.

[165] Q. Was there any mention made of using anyone else, any other helicopter operator?

A. Yes. They had, the Sedco and Horn people had, as far as I know, had discussions with PHI on rates.

Q. Was there any mention about compatability on facilities as prices?

A. I don't have a recollection of the exact comparison.

Q. What was the result, what happened as a result of the meeting while Mr. Restrepo was out of the room?

A. It was agreed we would let him have the contract.

Q. All right. Now, when you say "we would let him have the contract"—

A. We being the whole consortium.

Q. Was that put to a vote or was it necessary to vote?

A. I believe it was just a voice acceptance.

Q. And the representative of each one of the members accepted Helicol?

[166] A. Yes, sir.

Q. What happened after that meeting or that agreement, did Mr. Restrepo come back in the room?

A. Yes, sir.

Q. What was the conversation when he was back in the room?

A. Essentially to get moving.

Q. Why do you say get moving?

A. Because of the urgency of providing a helicopter just as soon as possible.

Q. Is this in connection with the survey you have been talking about?

A. Yes, sir.

Q. Did Mr. Restrepo remain in the meeting for the other items of discussion or did he leave?

A. No, he left at that time. There was no further requirements for him to be there. There were other subjects to be discussed.

\* \* \*

MR. GOFORTH (COUNSEL FOR HELICOL)

[168] Q. Williams was going to run this show down there in South America, basically, weren't they?

A. Essentially of the three we were the single manager, anything that required a major decision was by the majority of the three committee. The day to day operation was essentially by people that were supplied by Williams.

[169] Q. All right. I guess Mr. Novak, being one of those — and he is probably going to testify by deposition in a little while?

A. Yes, sir.

Q. He was general manager, is that right?

A. He was general manager of the Houston office and then he moved down to Peru and was named as president of the joint venture to supervise all the operations in Peru.

\* \* \*

[170] Q. And I guess as president Mr. Novak handled all the day to day operations down there in Lima?

A. He supervised the overall project, the day to day field operations under the direction of the various field superintendents.

Q. I guess they reported ultimately to him?

A. Yes, sir.

[171] Q. So to put it as clearly as possible, all the day to day operations of building this pipeline were handled out of the Lima office with Mr. Novak as president of the joint venture?

A. The day to day field construction, yes, sir.

Q. And I suppose any dealings that there were with Helicol were handled out of that Lima office also?

A. As far as day to day operations and submission of invoices.



Q. Yes, sir. Do you know any operations, be they the most important thing to the whole plant or the whole business, that might have been handled outside of the Lima office in connection with Helicol?

A. The only thing would be the payment of the bills.

Q. All right. But they were even invoiced in Lima, weren't they?

A. Yes.

\* \* \*

[177] Q. You say that Mr. Restrepo quoted you some figures for the helicopter service?

A. Yes.

Q. Then I think you said, and correct me if I'm wrong, that after he quoted you the figures for your required helicopter service, that he was asked to leave the room and then there was a discussion of the quotes?

A. At some time. I don't remember exactly where in the discussion the prices came up, but after we had had our discussions as far as prices, availability, working conditions, more or less who did what as far as supplies of fuel, housing, it was then that he was asked to leave so we could discuss it in private.

Q. That is when you say that you made the final decision to use Helicol?

A. Yes, sir.

Q. Was Mr. Restrepo informed at that time that there was going to be a discussion of whether or not he was going to be used and afterward that he—that the contract was going to be entered into?

[178] A. The reason for his leaving was so that we could discuss it. Then when it was decided he was called back in.

Q. Yes, sir. But even that was your reason, do you have any reason to believe that he knew that?

A. I could only surmise.

\* \* \*

[179] Q. When he came back in, no contract was signed or executed?

A. No, sir.

Q. In fact, that wasn't done until November down in Peru?

A. That is correct.

Q. In fact, at the time that he left, there was still lots of things that had to be worked out, I assume, on both sides?

A. I would assume so.

\* \* \*

[181] Q. At the time of this meeting, did you know on your own whether or not Mr. Restrepo had in fact the authority to bind Helicol one way or the other to—

A. No, sir, I did not know for a fact.

Q. The fact is he might not have been able to at all, to bind Helicol?

A. I would not know, personally.

\* \* \*

[Testimony of Edward Tallichet]

MR. GRAHAM (COUNSEL FOR WILLIAMS-SEDCO-HORN)

[185] Q. What is your full name, please, sir?

A. Edward Lacy Tallichet.

Q. What do you do for a living?

A. I work as an engineer for Brown & Root.

Q. What position for Brown & Root?

A. Senior Vice-President, Pipeline Division.

Q. How long have you been with Brown & Root?

A. Seventeen years.

Q. Mr. Tallichet, we're here to talk about a pipeline construction job done by Williams-Sedco-Horn in Peru in 1975 and 1976.

Would you tell us what Brown & Root's involvement with that project was?

[186] A. Brown & Root was the owner of Horn International Construction Company, which was a one-third, approximately one-third partner of the joint venture of Williams-Sedco and Horn.

\* \* \*

[191] Q. How did you first— we all know Helicol, the Colombian company, flew the helicopters on the job. Can you tell us how they became involved?

A. Well, George Littlejohn had nominated a man named Riga as a general manager to run the job as general manager for all three partners. He would be actively living in Peru. Well, Riga had run the—or worked on the Trans-Ecuadorian Pipeline and he and Littlejohn had used Helicol on that job. That was a lot of experience that they had had with the Helicol Company and they felt like they could handle the job as subcontractor and suggested this to the management committee.

[192] Q. What was the management committee told, were they told that Williams had gone ahead and subcontracted the helicopters or this was a proposal Williams was making?

A. No. The original thing was one of the earlier management meetings it was that the helicopters were getting, the ones we were planning on buying, were becoming very difficult to find. Mr. Littlejohn made the recommendation to the management committee that we subcontract these helicopters. He suggested Helicol would be the one we should subcontract with.

Brillier and Delbert Dorman and myself, who were members of the committee, asked him to go to this subcontractor and see what he could get them for, see if they could actually pick up the machines. Like I say, they were becoming very short in supply, see if he could put together some kind of subcontract we as a management committee, could vote on really to see just exactly what kind of deal he could put together for us.

[193] Q. At that stage was Mr. Littlejohn authorized by the managers of the joint venture to enter into a contract?

A. No. We asked him to look into and get all the background on this Helicol. The fact that he had worked with them before left a little bit of a—well, it was one of those things that you could make a deal on, a pay-off or whatever you want to call it. We didn't feel comfortable, you could pick up somebody for two, three million dollar job off the streets.

The partners—we had never met Helicol, we didn't know who they were, what they could do. We asked him to find out what they could furnish us and bring him to a meeting and let all the members of the management committee meet him face to face.

We kind of put an agenda together, questions we were going to ask this Helicol Company at a management meeting. Mr. Littlejohn was to call him in, bring him before us and answer these questions so we could be sure it was aboveboard contract.

[194] Q. When you say "him", you're talking about Helicol?

A. Helicol. Helicol at that time, I didn't know who they were.

\* \* \*

[195] Q. Before we get into the notes, where did the copy of the agenda come from that you have?

A. The original of this came out of my files at Brown & Root.

Q. Are you the custodian of that record?

[196] A. That's right.

Q. Let me ask you to read for the Court the handwritten notations on page 1 after aircraft.

A. It says Helicol, two Otters, (bought two 205's) committee to JV, stands for joint venture, available in fifteen days.

Q. The two Otters doesn't have anything to do with helicopters. That was another kind?

A. That was the two fixed-wing aircraft. At this particular meeting they instructed me to leave the meeting and go buy these two helicopters. This was the authorization we voted, the joint venture would buy the Otters and I was instructed to go purchase them and I did. It was why the word bought was put behind that.

Q. 205 Helicopters?

A. 205 Helicopters, that's correct.

Q. What does the notation available fifteen days mean?

A. That was what the Helicol representative was made to guarantee if we gave him the contract that he would furnish us the first helicopter in fifteen days. We had—the job had been pushed up to be done so fast we were trying to get some surveyors started to work. The only way to work in a jungle where we were, it was impossible, except by helicopter. You

could get a certain way by boat, but from that point, probably fifteen miles into the jungle, had to be done by helicopter. He promised within fifteen days he would have a 205.

[197] Q. How much is fifteen days from October 3rd? Let me get you to do some arithmetic for me. The meeting happened on October 3rd. You were promised the helicopters in fifteen days?

A. That's right, by the 18th.

Q. Of October

A. Of October.

Q. Let me get you to turn to page 6 under the section Aircraft, and ask if you can read the handwritten note where it says decided on one 205. If you will read that whole note for us.

A. The note says decided on one 205 on 10-28-74 at \$13,900, plus 120 hours at \$185 an hour for 120 hours. Over 120 hours, \$450 an hour.

We have an option on a second 205 available 5-1-75, availability and rate for 206 to be derived from Air Force.

[198] Q. What is the significance of that handwritten notation, what do the numbers mean?

A. This was—we called in the Helicol manager and asked him. He read these numbers off as to mean what the helicopters were going to cost the joint venture and the dates are the dates he promised us that he'd have machines for us, which were very critical to the job and probably the most important thing that we had.

Q. Are the rates noted in the pencil notations on page 6 the same rates that are in the contract between Williams-Sedco-Horn and Helicol?

A. Well, yes, what we actually did. The Helicol manager proposed these rates, he came before us and answered numerous questions that we asked him about his helicopters.

Q. Let me stop you. How long was he before you answering numerous questions?

[199] A. He must have been before the committee an hour-and-a-half, an hour to an hour-and-a-half. We called George Littlejohn, brought him to the meeting.

Q. When you say "he" are we talking about Mr. Restrepo, the general manager?

A. I don't recall his name. I know his name was Paco. I don't remember his last name. He was a Latin-American, he was the manager for Helicol.

Mr. Littlejohn brought Paco to the joint venture meeting, as we had invited him to do and he sat outside while we conducted several items of business.

And then Mr. Littlejohn called him and introduced him to the entire committee and we started asking these questions and from that, these numbers came out and these were read to us by Paco and after he answered the questions and particularly we dwelled possibly on delivery dates, he was asked to leave the room.

We had some internal discussion about the prices. Everybody was satisfied with those. Everybody was satisfied the man said he could deliver them and he could and he promised that first one and we had a management vote and voted at that time to accept this proposition from Paco.

[200] Q. What happened next, was he brought back into the room?

A. He was brought back in the room and told we had voted in the affirmative. I say "we", the management committee had voted in the affirmative. He was to immediately start to get the helicopter, the first one mobilized and make the deal on the second one so it could be sent on schedule.

Q. I note on page 6 there is a handwritten single word after the typed helicopters—it charter from Helicol. What is that single word?

A. Posco.

Q. What does that mean?

A. That was the name of the—I think his name was Paco. Walter wrote it Posco. I don't remember hearing the man's last name.

Q. Let me ask you this: Would the joint venture have entered into the contract with Helicol had the meeting not occurred in Houston or had there not been a meeting like the one occurred in Houston where Helicol came in face to face and talked to the board?

[201] A. No way. We had to be sure that we can get that first helicopter, because we had committed to the Peruvians the job would start by a certain date. To get it started by a certain date, we had started mobilizing probably \$50,000,000 worth of equipment in Houston. By the time that equipment left Houston and got to the Peruvian jungles, we had to have that survey a certain distance ahead of us. We had committed ourselves to start this job by a certain date and this particular point was very, very important it come to pass.

\* \* \*

[208] Q. What I am saying, the actual place where you had this meeting really didn't have anything to do with the substance of the meeting?

A. Yes, it did. The joint venture, because two of the partners were domiciled in Houston, it was decided that the joint venture office would also be domiciled in Houston. So when we did have these management meetings, they were scheduled fairly regular, that the least number of people would have to get on airplanes and move.

Now, Mr. Littlejohn was merely—their business was nearly ninety-nine percent international, maybe a hundred percent international, and Mr. Littlejohn was constantly on the move, where Bill Brillier and other members of the Houston contractors' business were headquartered in Houston and most of



their business, most of my business in the Gulf of Mexico and Delbert Ward and we were close to our work here. So the management meetings and office was decided to be had in Houston because of the convenience of being in Houston because it was easier to work out of here.

[209] Q. It was basically for your convenience you'd have the meetings here?

A. That's right.

Q. It certainly didn't have anything to do with Mr. Restrepo's convenience or Paco?

A. No.

\* \* \*

MR. GOFORTH (COUNSEL FOR HELICOL)

[210] Q. Well, was the joint venture bound and obligated by the contract that was executed in Lima, Peru, between Helicol and Williams-Sedco-Horn?

A. I presume we were bound by it. We operated by it.

[211] Q. You lived by it on a day to day basis?

A. As far as I know.

Q. For all the time you were contracting.

Do you have any reason to believe that Mr. Restrepo or Paco was empowered to enter into a binding contract at the time he was up here or was he just up here agreeing to agree? You know, that's a pretty commonly used phrase.

A. No. The reason for meeting in—this meeting we had with Paco was to really feel him out to see if he could do the things he was telling us he could do face to face. We wanted Mr. Littlejohn to bring him face to face with us so the management committee could make a vote to buy the helicopters, lease the helicopters or rent the helicopters, to do whatever.

But the reason for that meeting was to vote on which way we were going to go, on a fixed-wing aircraft and on the helicop-

ters. Up to that meeting, the vote was taken to buy fixed-wing aircraft, which I personally did, and to make a contract with Paco for the helicopters, which we did. That was the sole reason for that vote, was to make it legal.

[212] Q. All right. I guess you found out during the meeting whether or not Mr. Restrepo had the right to go into Peru and operate in Peru, since it was a foreign country?

A. Well, he spelled out his entire background and it was very significant, his background, the man had—he told us jobs he had done, was willing to furnish all kinds of backup. He was with a very large company. I don't remember the airline company, but it's a significant airline company he is a part of. He told us his whole background personally, about the pilots, the machines he was going to use, the ages of them. It was a very, very thorough meeting.

\* \* \*

[215] Q. All right. So everything that was important to you was accomplished and agreed upon at that meeting?

A. That is correct.

Q. Everything that had any importance in the contract was agreed upon at that meeting?

A. The actual wording of the contract was not. The management committee probably—the management committee was supposed to be responsible for telling someone to go out and make a contract. This was actually performed by the managing partner, but he could not enter into a contract until the management committee voted on it, majority vote. Details were not the management committee's problem.

[216] Q. After you voted on it, he entered into the contract?

A. As far as I know.

Q. So the contract was not entered into at the time of the meeting, but it was after you voted on it allowing Mr. Littlejohn to enter into it?

A. As far as I know.

IN THE  
DISTRICT COURT HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

No. 1,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

**DEPOSITION ON WRITTEN INTERROGATORIES OF BEN  
JAMES BROWN, BELL HELICOPTER COMPANY, TAKEN  
BY WILLIAMS-SEDCO-HORN**

Date: January 12, 1978

ANSWERS AND DEPOSITION OF BEN JAMES BROWN, BELL HELICOPTER COMPANY, a witness for the Defendant, Williams-Sedco-Horn, to the accompanying direct interrogatories propounded to him in the above-styled and numbered cause, taken before Shirley I. Korenman, a Notary Public in Tarrant County, for the State of Texas, at the offices of Bell Helicopter Company, located at Highway 183 East, in the City of Fort Worth, County of Tarrant, State of Texas, at 3:00 o'clock, P.M., on the 12th day of January, A.D., 1978, in accordance with the accompanying Notice.

PRESENT: George Galerstein, Esq.

**BEN JAMES BROWN,**

the said witness, being duly sworn to testify the truth, the whole truth and nothing but the truth in answer to the direct interrogatories as hereinafter indicated, deposes and says as follows:

**DIRECT INTERROGATORIES**

No. 1. Did Bell Helicopter Company manufacture a helicopter described as follows: 1970 Bell 205A-1, Serial No. 30079, Registration No. HK570, equipped with Lycoming turbine

No. T53-13B, Serial No. LE-07229X? If so, please state the following:

ANSWER: Yes.

(a) To whom was this helicopter sold?

ANSWER: The aircraft was sold to Helicopteros Nacionales de Colombia, S.A., or an acronym, Helicol, of Bogota, Colombia.

(b) To whom was this helicopter delivered?

ANSWER: The helicopter was delivered in Fort Worth, Texas, to authorized representatives of Helicol.

(c) The date(s) of such sales and deliveries.

ANSWER: The date of the sale occurred on or about 19 March 1970, and the delivery was effected on 10 April 1970.

No. 2. With regard to your sale of the aforesaid helicopter, please attach to your answers copies of all sales instruments, bills of sale, title transfer documents, shipping receipts, et cetera, and with regard to these documents, please state the following:

ANSWER: We have copies for you.

(a) Were these documents maintained and kept in the regular course of the business of Bell Helicopter Company?

ANSWER: Yes.

(b) Were said documents made at or near the time of the transactions described therein?

ANSWER: Yes.

(c) Were said documents made by someone at Bell helicopter who had personal knowledge of the transactions reflected therein?

ANSWER: Yes.

No. 3. With regard to the sale of the aforesaid helicopter, please state all persons, officers, directors or employees, connected in any way with Helicopteros Nacionales de Colombia,

S.A. ("Helicol") with whom officials of Bell Helicopter Company negotiated, stating specifically the following:

ANSWER: For Helicol, it would be Mr. Francisco Restrepo, General Manager of Helicol, and Mr. Sabas Pretelt, who is the Executive Vice-President.

(a) The date(s) of all negotiations between Helicol and Bell concerning the sale of this helicopter.

ANSWER: The dates of negotiations between Helicol and Bell concerning the sale of this helicopter occurred during early March 1970.

(b) The places of all such negotiations.

ANSWER: The place of negotiations was in Fort Worth, Texas, at Bell Helicopter Company.

(c) Whether such negotiations were in person, by telephone, et cetera.

ANSWER: The negotiations were conducted in person and subsequently by telephone and telegram.

(d) Whether Bell has ever received written correspondence from Helicol concerning the sale of this helicopter. If so, please attach true and correct copies of all such correspondence to your answers.

ANSWER: Yes, and we have copies to be attached.

No. 4. From the period January 1, 1969, through the present, has Bell Helicopter Company ever sold any helicopters, parts or any merchandise whatsoever to Helicopteros Nacionales de Colombia, S.A. ("Helicol")? If so, please state the following:

ANSWER: Yes.

(a) The complete identify of all such helicopters or merchandise sold.

ANSWER: I would refer you, please, to a document that we will submit, "Helicol Sales 1970 through 1977," which in sum and substance will provide you with the data required.

(b) The dates of such sales.

ANSWER: By year, they are given in that document.

(c) The dollar amounts of such sales.

ANSWER: That is provided in the document.

(d) The point of delivery.

ANSWER: All sales are F.O.B. factory, Fort Worth, Texas.

(e) The dates and locations of all negotiations leading up to any such sales.

ANSWER: I'm sorry, that is not obtainable. We consider that an ongoing process which is performed in person, telegraphically, letters, and no record is kept.

(f) Please attach to your answers all correspondence between Bell Helicopter Company and Helicol dealing with such sales whether the correspondence occurs prior to the sale or subsequent thereto.

ANSWER: All the correspondence that we have been able to find is included within the items to be provided today.

No. 5. Have officials of Helicopteros Nacionales de Colombia, S.A. ("Helicol") ever met with officials of Bell Helicopter Company within the borders of the State of Texas?

ANSWER: Yes.

No. 6. Has Bell Helicopter Company ever received telephone calls from employees, representatives, officers or directors of Helicopteros Nacionales de Colombia, S.A. ("Helicol")? If so, please state the following:

ANSWER: Yes.

(a) The dates of such telephone calls.

ANSWER: No record or journal of such calls is maintained.

(b) Who received the telephone calls?

ANSWER: Primarily, Mr. D. E. Mitchell, the manager of International Marketing Administration, and Mr. R. J. Gonzales, Regional Sales Manager for Latin America.

(c) The general purpose of such telephone calls.

ANSWER: The general purpose of such calls is principally inquiries concerning aircraft or spare parts availability; otherwise, status of orders placed regarding delivery, payment, and so forth, and/or technical questions concerning the maintenance and operational parameters of the aircraft.

No. 7. Has Bell Helicopter Company ever received written correspondence from Helicopteros Nacionales de Colombia, S.A. ("Helicol")? If so, please attach copies of that correspondence to your answers.

ANSWER: Yes.

I have copies.

No. 8. Has Bell Helicopter Company ever received telegrams or telexes from Helicopteros Nacionales de Colombia, S.A. ("Helicol")? If so, please attach copies of such telegrams or telexes to your answers.

ANSWER: Yes.

I have copies.

No. 9. Who is the person at Bell Helicopter Company who is the most familiar with the sales of helicopters by Bell to Helicopteros Nacionales de Colombia, S.A. ("Helicol")?

ANSWER: Mr. D. E. Mitchell, Manager, International Marketing Administration, and Mr. R. J. Gonzales, Regional Sales Manager for Latin America.

---

Ben James Brown

STATE OF TEXAS  
COUNTY OF TARRANT

Subscribed and sworn to before me by the said witness,  
BENJAMES BROWN, on this the \_\_\_\_ day of January, A.D.,  
1978.

---

Shirley I. Korenman, Notary Public in Tarrant County, for the  
State of Texas.

My Commission expires October 11, 1979.



Documents attached in Answer to Interrogatory No. 2

**PROMISSORY NOTE DATED APRIL 2, 1970**

\*\*

**PROMISSORY NOTE**

U.S. \$773,605.54

APRIL 2, 1970

FOR VALUE RECEIVED, HELICOL, S.A. hereby unconditionally promises to pay by this promissory note to the order of BELL HELICOPTER Co. at Bank of America, 37 Broad Street, New York, New York, the principal sum of Seven Hundred Seventy-Three Thousand six hundred and five 54/100 Dollars (\$773,605.54) in installments as hereinafter provided and to pay interest concurrently with each payment of principal at the rate of nine and one quarter per cent (9-1/4%) per annum, computed on a 360 day factor actual time elapsed basis, on the unpaid principal balance hereof from time to time outstanding.

The principal hereof shall be paid in ten (10) installments, the first of which shall be in the sum of Seventy-Seven Thousand, Three Hundred Sixty and Fifty-Nine Cents Dollars (\$77,360.59) and shall be due and payable on October 2, 1970. The remaining installments shall each be in the sum of Seventy-Seven Thousand Three Hundred Sixty and Fifty-Five Cents Dollars (\$77,360.55) and shall be due and payable semi-annually thereafter.

Both principal and interest of this promissory note are payable in lawful money of the United States of America without deduction for or on account of any present or future taxes, duties, or other charges levied or imposed on this note or the proceeds or holder hereof by the Government of COLOMBIA or any political subdivision or taxing authority thereof.

The right is reserved to prepay without penalty or premium, all or any part of the principal hereof on any principal payment

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\*\* Indicates information deleted due to illegibility or inability to reproduce.

date, any such prepayment to be applied to the remaining installments of principal in the inverse order of their maturities.

Upon default in the prompt and full payment of any installment of principal or interest on this promissory note, the entire unpaid principal hereof and interest thereon to the date of payment shall immediately become due and payable at the option and upon demand of the holder hereof.

The failure of the holder hereof to exercise any of its rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance. In the event of commencement of suit to enforce payment of this note, said Corporation agrees to pay such additional sum as attorney fees as the court may adjudge reasonable.

/s/ FRANCISCO RESTREPO  
Francisco Restrepo  
General Manager

#### GUARANTEE

FOR VALUE RECEIVED, Aerovias Nacionales de Colombia, as primary obligor(s), hereby unconditionally guarantee(s) the prompt payment of principal and interest on the foregoing promissory note when and as due in accordance with its terms, and hereby waive diligence, demand, protest, or notice of any kind whatsoever, as well as any requirement that the holder exhaust any right or take any action against the maker of the foregoing promissory note and hereby consent(s) to any extension of time or renewal thereof.

/s/ SABAS PRETELT M.  
Sabas Pretelt M.  
Executive Vice-President

CERTIFICATE OF AIRWORTHINESS FORM FAA-26 (12-60)

\*\*

No. E 97538

## EXPORT CERTIFICATE OF AIRWORTHINESS

THIS CERTIFIES that the product identified before and more particularly described in Specification(s)<sup>1</sup> of the Federal Aviation Agency, Numbered \*\*

has been examined and as of the date of this certificate, is considered airworthy in accordance with a comprehensive and detailed airworthiness code of the United States Government, and is in compliance with those special requirements of the importing country filed with the United States Government, except as noted below. This certificate in no way attests to compliance with any agreements or contracts between the vendor and purchaser, nor does it constitute authority to operate an aircraft.

Product.	Bell Helicopter		
Manufacturer	Bell Helicopter Company, Fort Worth, Texas		
	76101		
Model.	205A-1	Engine: LYCOMING	
		T53-13A	
		S/N: LE-07234	
Serial No.	30079		
New <input checked="" type="checkbox"/> Newly Overhauled <input type="checkbox"/>			
Used Aircraft <input type="checkbox"/>			
Country to which exported.	Colombia		
Exceptions			

/s/ L. T. Proctor

Signature of Authorized Representative

9 April 1970

DATE

BELL HELICOPTER COMPANY P.C. 100AGENCY REPRESENTED AND  
NUMBER

\*\*

DISTRICT OFFICE OR DESIGNEE  
NUMBER

For complete aircraft, list applicable specification or Type Certificate Data Sheet numbers for the aircraft, engine, and propeller. Applicable specifications or Type Certificate Data Sheet, if not attached to this export certificate, will have been forwarded to the appropriate Governmental office of the importing country.

\*\* Indicates information deleted due to illegibility or inability to reproduce.

BILL OF SALE DATED APRIL 10, 1970

BILL OF SALE

\*\*

MICROFILM CODE

For and in consideration of \$10.00 + the undersigned owner(s) of the full legal and beneficial title of the aircraft described as follows:

1C

JC

MANUFACTURER'S SERIAL  
NUMBER

NATIONALITY  
AND REGISTRATION MARKS  
Colombia HK-570

NAME AND ADDRESS

\*\*

Helicopteros Nacionales de Colombia, S.A.  
Helicol  
Bogota, Colombia

\*\* and to its executors, administrators, and assigns to have and to hold singularly the said aircraft forever, and certifies that the same is not subject to any mortgage or other encumbrance except \$796,500.00 April 2, 1970

TYPE OF ENCUMBRANCE

DATED

Promissory Note (Held by Bank of America-N.Y.) Two Aircraft 30079/HK570,  
30080/HK571

IN FAVOR OF

Bell Helicopter Company

In testimony whereof I have set my hand and seal this 10th day of APRIL 1970

NAME OF SELLER BELL HELICOPTER COMPANY, Division of Textron Inc.

BY (Sign in Ink)

\*\*

(If executed for co-ownership, all must sign)

TITLE AUTHORIZED REPRESENTATIVE

(If signed for a corporation, partnership, or agent)

ACKNOWLEDGMENT

State of Texas County of Tarrant On this 10th day of April, 1970 before me personally appeared the above named seller, to me known to be the person described in and who executed the foregoing bill of sale, and acknowledged that he executed the same as his free act and deed, and, if said bill of sale be that of a corporation swore that he was authorized to execute same. Given under my hand and official seal the day and year written above. \*\*

Commission Expires June 1, 1971

NOTARY PUBLIC

\*\*Indicates information deleted due to illegibility or inability to reproduce

BELL HELICOPTER RECEIPT DATED 10 APRIL, 1970

\*\*

10 April 1970

R E C E I P T

RECEIVED FROM BELL HELICOPTER CO. IN  
GOOD ORDER ONE BELL HELICOPTER MODEL  
205A-1, SERIAL NUMBER 30079, REGISTRATION  
NUMBER HK-570, AND INSTALLED EQUIPMENT,  
CARGO SUSPENSION ASSEMBLY AND CARGO  
BUMPER, FLYAWAY FACTORY FORT WORTH,  
TEXAS APRIL 10, 1970

/s/ CAPTAIN RINCON  
HELICOPTEROS NACIONALES  
DE COLOMBIA, S.A.

\*\* Indicates information deleted due to illegibility or inability to reproduce.

Documents attached in Answer to Interrogatory No. 3(d)

TELEX DATED APRIL 28, 1970

BELL HCPTR FTW

VDDLLV1140A CDT APR 28 70 NSA179 AB137 \*\*

A TRA673 VIA TRT ZLH ZZB \*\*

WUZCZC RSA 140 MIBO148 FC55 LH

UTNX CO COBO 038

BOGOTACOL 38/36 28 1020 VIA TROPICAL

FRANK KING BELL HELICOPTER COMPANY

POST OFFICE BOX 482 FORT-WORTH-1-TEXAS \*\*

FAVOR ACREDITAR CUENTA HELICOL BANK OF AMERICA  
NEW YORK DOLARES 75.000.00 CARGO ANTONIO  
ANGEL Y CIA ACERDO SU MEMO 04-FRK-3301

MARZO 19.70 STOP CONFIRME

HELICOL BOLIVAR

CFM 482 DOLOARES 75.000.00 04-FRK-3301 19/70

Please credit Helicol account, Bank of America, New York  
\$75,000.00 Charge Antonio Angel Y Cia., in accordance with your  
Memo 04-FRK-3301, March 19/70. Confirm.

\*\* Indicates information deleted due to illegibility or inability to reproduce.

TELEX DATED MAY 12, 1970

1107P CDT MAY 12 70 NSA464 AA563

A TRA602 VIA TRT LWZ

\*\*

WUZCZC RSA010 MIB0193 FC86

UTNX HL COBO 031

\*\*

BOGOTACOL 31-29 12 1816

LT

BELLCRAFT POST OFFICE BOX 842

FORTWORTHTEX

RM-903 SALES DEPARTMENT ATTENTION KURT BADEN  
PLEASE SEND CS ASAP BILL OF SALE CORRESPONDING  
BELLS 205A1 S/N30079 AND 30080  
CONFIRM HELICOL

\*\*

CASAS

CFM LT RM-903 205A1 S/N30079 30080

\*\* Indicates information deleted due to illegibility or inability to reproduce.

Document attached in Answer to Interrogatory No. 4(a)

**HELICOL**  
**SALES 1970 THRU 1977**

	43 Spares	204/205 Spares	205 Spares	AM & Vendor Spares	Misc.	Training	205 Ships	Access	204 Ships	Access	Total
1970	\$ 37,823.18	\$ 54,460.52	\$	\$ *89.00	\$25,236.33	\$	\$790,000.00	\$6,500.00	\$	\$	\$22,***.13
1971	23,453.26	2*,83*.05		5,0*2.64	6,767.70						6*,108.65
1972	110,301.02	1**,8**,*.5	197.54	7,77*.45	5,003.**	2,350.00					2**,529.**
1973	67,524.55	184,***.3*	481.26	7,260.*2	7,839.*5		440,000.00	6,474.21	137,500.00	6,802.30	**5,650.**
1974	67,908.33	*69,446.56	57,301.55	26,***.**	4**.*67	1,960.00	440,000.00				*6*,17*. **
1975	30,365.10	*37,195.70	33,863.78	41.4*5.*8	16,84*.92						968,7**.*0
1976	37,009.71	5*1,***.06	31,949.88	42,*3*. *7	10,233.52		615,000.00	5,200.00			1,*9*,56*. **
1977	100,606.60	***,2**.*08	13,821.75	*2,***9.64	4,1*9.**	1,800.00					666,***.61
TOTAL	\$474,990.75	\$2**2,253.49	\$137,615.76	\$191,2**8.0*	\$76,560.12	\$6,100.00	\$2,285,000.00	\$18,174.21	\$137,500.00	\$6,802.30	\$3,*76,227.68

135a

\*Denotes material omitted due to illegibility.



Document attached in Answer to Interrogatory No. 7

TRANSLATION OF LETTER DATED OCTOBER 24, 1974

HELICOL  
Bogota, Colombia

24 October 1974

HNC-G-604

Col. D. Rhodes  
Bell Helicopter  
P.O. Box 482  
Fort Worth, Texas 76101

Dear Dusty:

Our mutual friend, Boris de la Piedra, the Bell representative in Peru, is sending you a "letter of intent" for the purchase of two (2) Bell 205A-1 helicopters, for the company we are forming between a group of distinguished Peruvians and Helicol.

This letter, in addition to the purpose of greeting you, is also to confirm Helicol's participation in the above-mentioned project.

Cordially,

HELICOL, S.A.

/s/

Francisco Restrepo O.  
General Manager

\*\*

translation mh: 6639/10-31-74

\*\* Indicates information deleted due to illegibility or inability to reproduce.

Documents attached in Answer to Interrogatory No. 8

TELEX DATED JANUARY 25, 1974

P

BELCOPTERFTW

\*\*

V

\*\*

TLX1151/25

BELCOPTERFTW

BOGOTA ENERO 25 1974

\*\*

PAFEEPARA JORGE GONZALEZ

DOMINGO LLEGARAN ESA PLINIO DEL VALLE Y  
ANGEL LUQUETA ATENDER:

CURSO REPARACION COMPONENTES 206 PUNTO FAVOR  
RESERVAR HOTEL Y CONFIRMAR SALUDOS RESTREPO  
HELICOL

BELCOPTERFTW

Plinio Del Balle & Angel Luqueta will arrive Sunday to attend 206 Component Repair Course. Please reserve hotel and confirm. Regards. Restrepo, Helicol.

441225 \*\*

\*\* Indicates information deleted due to illegibility or inability to reproduce.

TELEX DATED APRIL 16, 1974

BELCOPTERFTW

VIA WUI

\*\*

BELCOPTERFTW

\*\*

441225 HL CO  
BOGOTA APRIL 16/74

\*\*

PARA JORGE GONZALEZ

PARA HELICOPTEROS 204/205 S/N 2018/3001 and 30079 AOG  
AGRADEZCOTE GESTIONAR DESPACHO INMEDIATO 10EA  
205-040-176-3 BOOT PTO ULTIMO DESPACHO DE BELL FUE  
INSUFICIENTE PTO ESPERAMOS CONFIRMACION

FOR 204/205 HELICOPTERS  
S/N2018/3001 and 30079, AOG,  
PLEASE ARRANGE IM-  
MEDIATE SHIPMENT 10  
EACH 205-040-176-3 BOOT.  
LAST BILL SHIPMENT  
WAS INSUFFICIENT. EX-  
PECT CONFIRMATION.  
REGARDS,

SALUDOS RESTREPO  
HELICOL

BELCOPTERFTW

\*\* Indicates information deleted due to illegibility or inability to reproduce.

139a

HELICOL REQUISITION FORM

\*\*

REQUISITION

TO:

VENDOR:

BELL HELICOPTER COMPANY  
FORT WORTH, TEXAS 76101

SAME

PART TO BE USED FOR:

MODEL 205A-1

ITEM	QTY	UNIT	PART NUMBER	DESCRIPTION	UNIT PRICE	VALUE
1	6	EA	204-011-250-001	BLADE ASSY, M/R	7.384.25	44.305

——— CLOSED ———

SPECIAL NOTE: THIS ORDER PER TELEGRAMS SA-741148  
DATED SPT. 24/74 AND BLCOL187 DATED  
SPT. 25/74

Each Requisition is to be limited to items of like nature

TOTAL U.S. \$44.305

REMARKS OR SPECIAL INSTRUCTIONS:

UNITS TO BE SHIPPED TO HELICOL OPERATION  
AT PERU S.A. PER FURTHER INSTRUCTIONS.

PREPARED BY:

AUTHORIZED BY:

APPROVED BY:

\*\*

\*\*

\*\*

SUPERINTENDANT OF

DIRECTOR OF  
MAINTENANCE

MATERIALS

\*\* Indicates information deleted due to illegibility or inability to reproduce.

140a

TELEX DATED NOVEMBER 5, 1974

VIA WUI +

BELL HCPTR FTW

44587 ANCL CO 13480 TELEX NO. 273 NOVEMBER 5/74 TIME  
12:30

GEORGE GONZALEZ

\*\*

HERNAN DE LOS RIOS FUNCIONARIO HELICOL LLE-  
GARA ESA VIERNAS 8.

HERNAN DE LOS RIOS, HELICOL OFFICER, WILL AR-  
RIVE  
THERE FRIDAY THE EIGHTH.

SALUDOS

\*\*

ANTOCO/SOTO

+

BELL HCPTR FTW

44587 ANCL CO

\*\*Indicates information deleted due to illegibility or inability to  
reproduce.

141a

TELEX DATED DECEMBER 4, 1974

BELCOPTERFTW

\*\*

1302 EDT

441225 HL CO

\*\*

BOGOTA OCTUBRE 19/74

\*\*

PARA GEORGE GONZALEZ

OPERACION 204B/205-A1 SERIAMENTE AFECTADA POR  
FLATA CADENAS 205-001-721-001 PTO TENEMOS  
COMPROMISOS ADQUIRIDOS COMPANIAS PETROLERAS  
NOPODEMOS INCUMPLIR PTO AGRADEZCOTE DESPACHO  
INMEDIATO BALANCE PO BH-2261 Y BH-2266 PTO ESPERO  
RESPUESTA SALUDOS RESTREPO HELICOL

204B/205A-1 OPERATION SERIOUSLY AFFECTED  
BY LACK OF CHAINS 205-001-721-001. WE HAVE  
OBLIGATIONS CONTRACTED WITH OIL COM-  
PANIES AND CANNOT NON-COMPLY. PLEASE  
SHIP IMMEDIATELY BALANCE BH-2261 AND BH-  
2266. AWAIT REPLY. REGARDS. RESTREPO,  
HELICOL.

\*\*

BELCOPTERFTW

\*\* Indicates information deleted due to illegibility or inability to reproduce.

142a

TELEX DATED DECEMBER 4, 1974

1505 EST

\*\*

441225 HL CO

BOGOTA DICIEMBRE 3/74

ATT:RHODES

\*\*

FIN ADELANTAR CONSTITUCION EMPRESA PERUANA Y  
OBTENER CONTRATOS URGE CONFIRMENOS MAYOR  
BREVEDAD FECHA ENTREGA PEDIDOS TRAMITO DE LA  
PIEDRA SALUDOS FRANCISCO RESTREPO HELICOL

IN ORDER TO ACT ON CREATION OF PERUVIAN  
COMPANY AND OBTAIN CONTRACT, WE  
URGENTLY NEED CONFIRMATION SOON AS  
POSSIBLE DELIVERY DATE ON ORDERS BEING  
PLACED BY DE LA PIEDRA. REGARDS. FRAN-  
CISCO RESTREPO, HELICOL

mh

\*\*

BELCOPTERFTW

441225 NL CO

\*\* Indicates information deleted due to illegibility or inability to reproduce.

143a

TELEX DATED DECEMBER 18, 1975

RCA 1630 18

BELCOPTERFTW

441225 HL CO

\*\*

BOGOTA DICIEMBRE 18/75

4:30PM

ATT. GEORGE GONZALEZ

\*\*

TELEX NO. 192

URGE ENVIEN CONDICIONES ARRENDAMIENTO HELI-  
COPTERO BELL 214B

DALUDOS RESTREPO HELICOL

URGENT YOUR SEND LEASING CONDI-  
TIONS  
FOR 214 B HELICOPTER. REGARDS.

/s/ Restrepo, Helicol

BELCOPTERFTW

441225

\*\* Indicates information deleted due to illegibility or inability to reproduce.



DEPOSITION OF CHARLES JAMES NOVAK  
FEBRUARY 10, 1978

MR. GRAHAM (COUNSEL FOR WILLIAMS-SEDCO-HORN)

[4] Q. What is your full name?

A. Charles James Novak.

Q. Where do you live?

A. At 10184 Longmont, Houston.

Q. What do you do for a living?

A. I'm a professional engineer.

Q. Who do you work for?

A. Brown & Root, Inc.

Q. How long have you worked for Brown & Root?

A. Approximately six months.

Q. What did you do before you worked for Brown & Root?

A. I was employed by the Williams Companies in Tulsa, Oklahoma, for twelve years.

Q. What are the Williams Companies in Tulsa, Oklahoma?

A. The Williams Companies are a conglomerate corporation consisting of a foreign construction division, a pipeline transportation division, an agricultural plant, and food division.

[5] Q. Have you ever been associated with a company or business called Williams-Sedco-Horn?

A. In September of 1974 I was appointed the general manager of Williams-Sedco-Horn to oversee the Houston office.

Q. Tell me what Williams-Sedco-Horn is or was.

A. Williams-Sedco-Horn was a joint venture organized to fulfill a contract for a crude oil pipeline from the jungles of Peru to the Pacific Ocean for Petro Peru, a state-owned oil company.

Q. I'd like you to tell us just a little bit more about the project. Petro Peru was going to be the owner of the pipeline?

A. Yes, sir. It is a government entity.

Q. What size project was this?

A. The final cost was approximately seven hundred million. Our particular contract value was a hundred and seventy-one million, plus or minus.

Q. Where was the pipeline to be built?

A. It was built in the jungles in eastern Peru at a place called Yauyos to Morococha to Bayovar on the Pacific Ocean.

[6] Q. How long a distance is that?

A. The total pipeline was about nine hundred and fifty kilometers.

Q. Tell me a little bit more about that. It was a joint venture?

A. Yes.

Q. Who was in that joint venture?

A. The Williams Companies out of Tulsa, Sedco Drilling Company out of Dallas and Horn Construction Company out of Merrick, New York.

Q. Was there a managing partner?

A. Yes, Williams was the managing partner.

Q. When was your first association with Williams-Sedco-Horn?

A. In September when I was appointed the general manager of the Houston office.

Q. When was the contract between Williams-Sedco-Horn and Petro Peru entered into?

A. If memory serves me right, September 16, 1974.

\* \* \*

[7] Q. When did you set up the Houston office for Williams-Sedco-Horn?

A. We started organizing it in the last half of September.

Q. Of 1974?

A. 1974.

Q. This lawsuit that we are here today involves the crash of a helicopter in Peru in 1976?

A. No, 1975.

Q. Would you tell us, by way of background, why you needed helicopters to build a pipeline in Peru?

A. Because the jungle was completely inaccessible. There are no roads, other than the waterways. You could either get into the place by boat or by helicopter, airplane.

Q. Are you familiar with the company called Helicopteros Nacionales de Columbia or Helicol?

A. Yes.

Q. What is your familiarity with Helicol?

A. Prior to this contract, I had heard of them as one of the leading helicopter service companies in South America.

[8] Q. Where had you heard of them?

A. Through Williams.

Q. Had they worked with Williams before?

A. Yes.

Q. Where had they worked?

A. They had worked in Columbia and they worked in Ecuador and, I believe, Bolivia.

Q. Prior to the Williams-Sedco-Horn contract with Helicol, had you ever, yourself, met any of the officers or agents or employees of Helicol?

A. No, sir.

Q. Why was Helicol selected by Williams-Sedco-Horn?

A. In the opinion of management, we thought they were the best qualified to do our services over the jungle area.

Q. Based on your past experiences?

A. Based on past experiences, yes.

Q. Do you know a man named Francisco Restrepo and, I believe, there is an "o" after his last name?

A. I knew of him before the joint venture and then I met him in October, the first part of October, when he came up to our office to finalize the contract.

[9] Q. Who is Paco Restrepo?

A. Evidently, that's his nickname.

Q. Who is Paco Restrepo?

A. He's general manager of Helicol.

Q. Is he the head man at Helicol?

A. As far as I know.

Now, there might be a manager director that I don't know.

Q. When did you first meet Mr. Restrepo?

A. The first part of October.

Q. Where did the meeting take place?

A. It took place at Houston Contracting's office at 2807 Buffalo Speedway. . . .

\* \* \*

[10] Q. What was the date of the meeting?

A. We have a telex from Restrepo saying he's arriving in Tulsa on the 2nd, so he came down here the morning of the 3rd and we had the meeting on October 4th, 1974.

Q. Do you know how he came down here?

A. Williams Company plane.

Q. What was the purpose of the meeting?

A. To get—well, among other things, basically, personnel problems and also to finalize the Helicol contract with the joint venture and get a management approval of this contract.

Q. Before the meeting, had there been some discussion with Helicol and Mr. Restrepo about the contract?

A. Yes. The joint venture partners more or less, since Williams was the managing partner and it had experience with Helicol, it said, "You take the lead and get in contact with Helicol and work out a contract and I'll go over it, approve it."

[11] Q. Was the purpose of this meeting to iron out the details of the contract?

A. Yes. The contract had pretty well been finalized with Williams—and I wasn't present—but, I assume, in Tulsa on the 2nd.

Q. When you say, "It had been finalized in Tulsa on the 2nd," what do you mean by that?

A. They more or less reached an agreement on the major points and we came down to this meeting and talked in general terms: who is going to supply fuel, who is going to camp our people, how much time you are going to be off, how are we going to get our people in and basic generalities are what we talked about.

Q. How long did the meeting last?

A. Well, the whole management meeting lasted from approximately 9:30 until sometime mid-afternoon, 2:30 or so.

Q. Was Mr. Restrepo in attendance during the entire meeting?

[12] A. No. He was in and out.

Q. Was he there from 9:30 until 2:30?

A. He was in the building during that period, but he was in and out of the meeting.

\* \* \*

[14] Q. After the meeting broke up in October of 1974, was there anything else that needed to be done with regard to the contract or was the contract already completed?

A. I think a draft form had already been completed, but this was finalized and signed by the parties.

Q. Were all the details in what was going to be the contract decided upon in—

MR. GOFORTH: I object to that as leading.

A. Yes.

Q. What was left to do with the contract other than have it signed in Peru, after the meeting in Houston?

A. I don't know of anything, because I didn't work on it any longer after the management committee approved it.

\* \* \*

[15] Q. Will you turn with me to the English version of the contract, to paragraph number eight and would you read the first sentence of that paragraph for us, sir?

[16] A. "The monthly invoicing will be made up from Helicol to Consorcio, in American dollars, the first ten days of each month in their offices in Lima and must be paid by the main office of Consorcio within thirty days following their presentation."

Q. Where was the main office of the Consorcio?

A. The main office was—in essence, there were two.

Q. Well, I want to talk about paragraph eight when it said “must be paid by the main office of Consorcio”.

A. The main office is here.

Q. By “here”, where do you mean?

A. Houston, Texas.

Q. How did billing work?

A. Helicol invoiced us for X number of hours a month and our people in the field had a log that they kept every day and signed their daily time sheets that they flew X number of hours each month. We got an invoice, then we got the daily log and compared them and if the figures compared, we approved the invoice and sent it to Houston and it was paid.

[17] Q. How was the payment in Houston handled?

A. Once we received the invoice approved, we passed it through our accounting department and cut a check for where they wanted the money deposited.

Q. The check was cut on a Houston bank?

A. Yes, First City National.

Q. Where was the money from First City National delivered?

A. I don't remember. We had numerous accounts that people wanted paid in different banks and I don't recall where Helicol said they wanted it deposited.

Q. Did you send the money to Peru?

A. No. It was deposited in a U.S. bank someplace.

Q. Why was the money not sent to Peru?

A. First of all, you can't have U.S. dollars in Peru.

\* \* \*

[18] Q. During the project, it was necessary to get another additional helicopter. I believe this was Bell 214. Can you tell us how this was arranged?

A. Basically, when I left Houston, Paul Schexnailder became the general manager in the Houston office. When we needed it, I called him and told him to find one and get it down here by a certain date.

Q. Who owned a Bell 214?

A. There were only three. One was owned by Rocky Mountain Helicopter in—I can't tell you the town—in Provo, Utah.

Q. How did that helicopter get to work in Peru? What was the arrangement between Helicol, Williams-Sedco-Horn and Rocky Mountain that enabled Rocky Mountain to fly a—

[19] MR. GOFORTH: I object to that because it implies that Helicol was involved in some sort of negotiations with Rocky Mountain, which may or may not have been.

Q. (By Mr. Graham) Go ahead and answer the question.

A. Helicol was operating in Peru and the PAFHB group—

Q. For the record, what is PAFHB group?

A. Peruvian Air Force Helicopter Branch.

They said they were not issuing any more permits for an outside concern to come in and fly helicopters. The only way it could be brought in was under Helicol's umbrella.

Q. How, exactly, did that work?

A. We paid a commission to Helicol to use their name.

Q. Did you have a contract between Williams-Sedco-Horn and Rocky Mountain?

A. I can't answer that because I did not see it. It was all up there in the Houston office while I was in Peru.

Q. Was it your understanding—

A. There was a contract, but I didn't see it.



[20] Q. Was it your understanding that Rocky Mountain was a subcontractor under Helicol?

A. I guess, in essence, it was. Yes.

Q. How did Rocky Mountain get paid for its services in Peru?

A. We paid them directly out of the Houston office. I believe the fee was ten percent and we paid the other ten percent to Helicol.

Q. What were your instructions to Mr. Schexnailder about getting Rocky Mountain and Helicol together?

A. Other than the fact that I told him they couldn't come in as Rocky Mountain. He had to work out something through the Helicol name.

Q. When you were in Peru, did you have a chance to meet any of the Helicol pilots?

A. I knew them all. I rode with them most of the time.

Q. To your knowledge did any of these pilots come to the state of Texas?

A. Some of them said they were going to.

Q. Where did they say they were going?

A. To Bell for training.

MR. GOFORTH: I object to that as hearsay.

Q. (By Mr. Graham) Was this at Fort Worth?

A. Yes.

Q. Had any of them told you they had been to Bell before?

A. I don't recall. Some of them said they were going.

MR. GOFORTH: I object to it as hearsay.

[21] Q. (By Mr. Graham) Can you tell us a little bit more about what you know of Helicol's business? What other major jobs did they have?

A. Helicol had a contract for Occidental. They had another contract for Occidental in Bolivia while they were in Peru that didn't have anything to do with Peru. They flew all over South America.

Q. How big a company is Helicol?

A. I have no idea. It's owned by Avianca, the Colombian state airlines.

\* \* \*

[22] Q. Do you know if Mr. Restrepo was in Texas any more than the time you have already told us about?

A. No, sir, I don't.

\* \* \*

[24] Q. When you decided to use Helicol, did you consider the training of their pilots as one of the reasons you decided to use them, rather than the Peruvian air force?

A. When we looked at the job before we bid it, we rode with the Peruvian air force people and they were not very good. Basically, Peru or Latin America's attitude is "manna", so they are not going to do the work these other people will do and we couldn't afford to have a forty-percent operation when we needed a hundred-percent operation and Helicol could give us the hundred percent.

Q. Was it significant to you that Helicol had American-trained pilots?

[25] A. They did not. They had Colombian pilots. They have been in business twenty-one or twenty-two years as a helicopter service company.

\* \* \*

MR. GOFORTH (COUNSEL FOR HELICOL)

[25] Q. Do you know any of the plaintiffs who brought these lawsuits against Williams-Sedco-Horn and Helicol?

A. Yes.

Q. Do you know the survivors?

A. Yes.

Q. Do you know the men—

A. Yes.

Q. —Mr. Hall and Mr. Moore, Mr. Llewellyn, Mr. Porton?

A. Yes.

Q. Was it Porton? Was that his name?

A. Yes, Alton Porton.

[26] Q. Did any of these people live in Texas?

A. I'd have to look at the personnel records.

Q. Do you know whether or not any of their families were in Texas while they were down there in Peru working for Williams-Sedco-Horn?

A. No, sir, I don't.

Q. I guess you have got the records?

A. The joint venture has them.

Q. Do you know whether any of these four men hired out of Houston?

A. They were all hired out of Houston.

\* \* \*

[27] Q. Just so that the Judge is not misled, this contract wasn't entered into in Houston, was it, sir?

A. The parties shook hands in Houston. It was signed in other places, I guess.

Q. It was signed in Lima, wasn't it?

A. Mr. Riga signed it in Lima.

Q. On November 11, 1974. Isn't that right?

A. That's what it says; yes, sir.

Q. Did he sign this English version down there in Lima?

A. No. He signed the Spanish. He was fluent.

\* \* \*

[28] Q. Well, when did you first see this English translation?

A. When I had Berlitz translate it for me.

Q. After Mr. Riga had signed it down in Lima?

A. Right.

Q. So, it was after November 11, 1974?

A. Right.

Q. So, you didn't have an English-language version of this thing before it was signed in Spanish down in Lima?

A. No, sir.

This was just my initial that I had read it and this was a copy of that contract.

Q. You had read it after it had already been signed in Lima?

A. That's right.

Q. And you are the one that had it translated?

A. Yes, sir.

Q. When you had this meeting in October, did you have a copy of this?

A. The draft copy of that, yes.

[29] Q. The draft copy, was it in English or Spanish?

A. I can't tell you right offhand. I don't have any idea.

Q. Since you had to get it translated, it probably was in Spanish, don't you think?

A. I suspect it was both, but it was in a draft form and that was carried on back to Lima while they finalized the thing.

Q. And you don't remember seeing it in English.

I suppose you are fluent in Spanish?

A. No.

Q. Do you read Spanish at all?

A. No.

Q. Can you read a document like this?

A. No, sir, I cannot.

Q. So, the first time, as far as you know, that you ever saw that document in English was after it was signed, when you had Berlitz translate it?

A. Right.

Q. Now, how many times did you see Mr. Restrepo in the United States?

A. Only the one time.

Q. And he was here on this visit in October that you testified about?

A. Yes.

[30] Q. That was the only time you ever saw him?

A. Yes.

Q. Now, have you ever seen anybody else from Helicol in Texas?

A. Not that I know of. No, sir.

Q. They might have, but you didn't see them?

A. They didn't come by and pay a special call to Williams-Sedco-Horn.

Q. Mr. Restrepo was the only person from Helicol that you ever saw in Texas while you were the general manager of the Williams-Sedco-Horn operation?

A. Right.

Q. The only person from Helicol that you ever saw in Texas was Mr. Restrepo?

A. Right.

Q. That was one time?

A. Yes.

Q. That was the meeting from 9:30 a.m. to 2:30 p.m. in October?

A. Approximately October.

Q. He was in and out?

A. Right.

Q. And you said, I think, that you assumed that he was out talking with other people when he was gone?

[31] A. Evidently, because the first part of the meeting was to agree with the executive committee that the general terms of this contract were okay and then he got up and excused himself and left and came back in at different times. What he was doing, I don't know.

Q. Do you know what he was doing while he was gone?

A. No, sir, I do not.

Q. Do you know what happened with this contract from October 3rd or 4th, whenever it was, until November 11 when Mr. Riga signed it?

A. I can only tell you what I think.

It was back in Lima being agreed to by the lawyers of both parties.

Q. So, they had to actually finalize it down in Lima, the lawyers in Peru, the people who knew what they were doing and knew what that contract was going to be for. They actually were going over it and they signed it on November 11, by Mr. Riga?

A. In Spanish.

Q. As far as you know, this contract was never signed in English?

A. No.

[32] Q. It was intended to be performed totally in Peru?

A. That's the only place we had any service for helicopters.

Q. You didn't intend for them to come up here and do any helicopter work for you up here?

A. No. We didn't have any work up here.

Q. Was Williams-Sedco-Horn conceived solely to perform this work down in Peru?

A. Yes.

\* \* \*

Q. When Mr. Restrepo was here, did he talk about doing work for anybody else other than in Peru?

A. No.

[33] Q. Did he solicit your business for anything else other than this contract that you were entering into?

A. That's the only thing we were talking to him about.

\* \* \*

[35] Q. What did Rocky Mountain provide?

A. A 214 helicopter for hanging pipe in the mountain country.

Q. Where were those negotiations carried out?

A. Right here in Houston.

Q. Where is Rocky Mountain Helicopters located?

A. Provo, Utah.

Q. Mr. Peterson came down from Provo and he negotiated with somebody from Williams-Sedco-Horn?

A. Paul Schexnailder.

Q. And you are not testifying at all that anybody from Helicol was present?

A. I don't know.

Q. You simply know that this helicopter was brought down into Peru?

A. Right.

Q. And was piloted by Helicol pilots?

A. No, sir. It was piloted by Rocky Mountain pilots.

[36] Q. So, Helicol had nothing to do with the operation of this helicopter?

A. That's right. It was just under their name.

Q. Do you know whether they helped to maintain the helicopter or whether it was maintained by Rocky Mountain?

A. It was maintained by Rocky Mountain.

Q. So, everything with regard to the helicopter was performed by Rocky Mountain?

A. Right.

\* \* \*



Q. Did you have continuous dealings with Helicol until the end of the contract period?

A. No, sir. The permits ran out on December 31, 1976, and all of the helicopters left the country.

[37] Q. Up until that time, do you know of anybody else but Helicol that ever came to the United States?

A. No, sir.

Q. Did you deal with anybody from Helicol?

A. We did, down in Peru, all the time.

Q. Did you deal with them in Peru?

A. They had a manager of operations down there, just like myself, that took care of their business in Peru.

Q. What was his name, sir?

A. Oh, Lord—I can't tell you.

Q. Well, let me ask you this: Did he ever come to Texas?

A. Yes, he did. He came to Texas when he helped Rocky Mountain ferry the 214 down there.

Q. So, he was a pilot?

A. Well, he came as a ferry pilot. He came to someplace in the United States and I assume—I don't know where. I can't answer that, but he did come to help them ferry it down.

Q. So you don't know whether or not it was in Texas, just somewhere in the United States?

A. Right.

Q. Their headquarters were in Provo, Utah?

A. Right.

[38] Q. He very easily could have gone to meet the helicopter in Provo, Utah?

A. Right.

Q. Do you know of any other occasion when he came to the United States?

A. No, not offhand. No.

Q. Any dealings that you had with him with regard to this contract were performed in Peru?

A. Yes. He came by the office all the time and we talked our problems out, first one thing and another.

Q. The fact of the matter is all of the dealings that you had with Helicol at any time with regard to this contract—

A. The operational part of it, right.

Q. —were in Peru?

A. Right.

MR. GOFORTH: I don't think I have any more questions.

MR. PLETCHER (COUNSEL FOR PLAINTIFFS)

Q. What I am trying to establish for my own purposes here for my client is what contacts Helicol had with the State of Texas and are you aware that Helicol bought its helicopters from Bell Helicopter in Fort Worth?

[39] A. Only the fact that's where Bell helicopters are made as far as I know, that's the only source of sales.

Q. And that's the kind of helicopter they used?

A. Yes, the Bell 205.

Q. Are you familiar with the fact that helicopter pilots are trained at Fort Worth by the Bell Helicopter people?

A. Other than the pilots saying they were going to Bell for training.

Q. Were you aware that Helicol got all of its parts for their helicopters from Fort Worth?

A. Other than the fact that that's the only place that they have a source of supply.

Q. Were you aware, Mr. Novak, that Helicol did several million dollars worth of business with Bell Helicopter over a period of three or four years before the crash?

MR. GOFORTH: I object to these questions as leading.

Q. (By Mr. Pletcher) Go ahead and answer.

A. Yes, sir.

Q. As I understand it, these things you do know, would not be hearsay, but because you have personal knowledge. You know Helicol sent its general manager—he came here to Houston and you all discussed the contract that we are concerned with here in this case and the parties were all represented here and you shook hands on it and made the deal here?

[40] A. Right.

Q. The lawyers handled it down in Peru, as far as putting it in legal language and getting it signed was done down there?

A. Yes.

MR. GOFORTH: I object to that as leading.

Q. (By Mr. Pletcher) The agreement was here and the handshake took place here in Houston?

A. Right.

Q. And these men who were killed in the helicopter crash were contracted for the job right here in Houston?

A. Right.

Q. Helicol billed Williams-Sedco-Horn in the City of Houston and sent their bills here for payment?

A. Well, they billed us in Lima and we, in turn, sent it here, because they wanted it paid in U.S. dollars and you could not have U.S. dollars in Peru.

[41] Q. You did that because Helicol wanted you to do it that way?

A. Yes.

Q. Helicol was then paid in checks drawn on the First City National Bank?

A. Right.

Q. In Houston.

MR. PLETCHER: I believe that's all.

\* \* \*

\* \* \*

WYATT H. HEARD  
JUDGE, 190TH DISTRICT COURT  
CIVIL COURTS BUILDING  
HOUSTON, TEXAS 77002

March 28, 1978

[To Counsel of Record for all parties]

RE: No. 1,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*,  
190TH DISTRICT COURT

GENTLEMEN:

You will recall that we heard the above on February 28th and March 6th. After listening to all of the evidence, summations of counsel and reading the briefs submitted on behalf of the respective interests, the court overrules the motion for special appearance.

Counsel will prepare the appropriate order for entry by the court.

Sincerely,

/s/ Wyatt H. Heard  
WYATT H. HEARD

IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

CAUSE NO. 1,087,423

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

**ORDER OF CONSOLIDATION**

BE IT REMEMBERED, that on the 25th day of April, 1980, came on to be heard Bell Helicopter Company's Motion for Consolidation, and the Court being of the opinion that said Motion should be GRANTED, it is, therefore,

ORDERED, ADJUDGED and DECREED that the following cases be consolidated into this case:

*Cause No. 1,098,919*—Naomi Lewallen, et al v. Williams-Sedco-Horn, a Joint Venture, et al; In the 189th Judicial District Court of Harris County, Texas;

*Cause No. 1,098,921*—Louise C. Moore, et al v. Williams-Sedco-Horn, a Joint Venture, et al; In the 164th Judicial District Court of Harris County, Texas;

*Cause No. 1,098,920*—Harve Porton, et al v. Williams-Sedco-Horn, et al; In the 215th Judicial District Court of Harris County, Texas.

SIGNED this 12th day of May, 1980.

/s/ Judge Wyatt H. Heard  
JUDGE WYATT H. HEARD  
190th Judicial District Court

IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS  
190TH JUDICIAL DISTRICT

**NO. 1,087,423 (CONSOLIDATED)**

ELIZABETH HALL, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

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IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS  
189TH JUDICIAL DISTRICT

**NO. 1,098,919**

NAOMI LEWALLEN, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

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IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS  
164TH JUDICIAL DISTRICT

**NO. 1,098,921**

LOUISE C. MOORE, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

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IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS  
215TH JUDICIAL DISTRICT

**NO. 1,098,920**

HARVE PORTON, *et al.*,

v.

WILLIAMS-SEDCO-HORN, A JOINT VENTURE, *et al.*

### **JUDGMENT**

**BE IT REMEMBERED** that on the 27th day of May, 1980, at a regular term of this Court, there came on to be heard, in due order, the above entitled and numbered consolidated causes;

thereupon came the plaintiffs, Elizabeth C. Hall, individually and as Next Friend of Delbert Hall, a minor, Lydell C. Hall, Pamela Hall Toler, John H. Hall, Harve Porton and Verda Ola Porton, individually and as Next Friend of Jeffery Taylor Porton, a minor, Michael Elton Porton, Susan Carol Porton, Naomi Lewallen, individually and as Next Friend of Ginger Lewallen, a minor, Gary Lewallen, Glenda Lackland, Glen Lewallen, Gay Smith, Louise C. Moore, Stanley C. Moore and Susan C. Moore, in person and by their attorney of record, and came also the defendant, Helicol, by and through its attorney of record, the defendants, Bell Helicopter Company and Williams-Sedco-Horn, a Joint Venture, through their attorneys of record, and all parties announced ready for trial; whereupon a jury of twelve duly qualified jurors were tested, selected, impaneled and sworn and said cause proceeded to trial; whereupon the pleadings of the parties having been stated to the jury, all parties then introduced their testimony at which time the evidence and testimony adduced on behalf of the parties having been concluded and the parties having rested, the Court granted instructed verdict to Williams-Sedco-Horn, a Joint Venture, and withdrew the claims of all parties against Bell Helicopter Company from the jury and rendered judgment in favor of Bell Helicopter Company that plaintiffs, Helicol and Williams-Sedco-Horn take nothing against Bell Helicopter Company. After having heard the arguments of counsel and having been given the charge of the Court the Jury returned into open Court on June 3, 1980 its verdict, to-wit:

**SPECIAL ISSUE NO. 1:**

Do you find from a preponderance of the evidence that the pilot failed to keep the helicopter under proper control on the occasion in question?

Answer: "We do".

**SPECIAL ISSUE NO. 2:**

Do you find from a preponderance of the evidence that such failure was a proximate cause of the crash in question?



Answer: "We do".

**SPECIAL ISSUE NO. 3:**

Do you find from a preponderance of the evidence that on the occasion in question the helicopter was flown into a treetop fog condition, whereby the vision of the pilot was impaired?

Answer: "We do".

**SPECIAL ISSUE NO. 4:**

Do you find from a preponderance of the evidence that such flying was negligence as that term has been defined for you?

Answer: "We do".

**SPECIAL ISSUE NO. 5:**

Do you find from a preponderance of the evidence that such negligence, if you have so found, was a proximate cause of the crash in question?

Answer: "We do".

**SPECIAL ISSUE NO. 6:**

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Elizabeth Hall for her pecuniary loss, if any, resulting from the death of Dean C. Hall?

Consider the following elements and none other: care, maintenance, support, services, advice, counsel and contributions of pecuniary value that Elizabeth Hall would in reasonable probability have received from Dean C. Hall during his lifetime had he lived.

Answer in dollars and cents, if any.

Answer: \$300,000

**SPECIAL ISSUE NO. 7:**

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the following named children of Dean C. Hall for their pecuniary loss, if any, resulting from his death?

Consider the following elements and none other: care, maintenance, support, services, education, advice, counsel and contributions of pecuniary value that such children would in reasonable probability have received from him during his lifetime had he lived.

Answer in dollars and cents, if any, with respect to each.

Answer: To Delbert Hall \$30,000  
 To Lydell C. Hall -0-  
 To Pamela Hall Toler -0-  
 To John H. Hall -0-

#### SPECIAL ISSUE NO. 8:

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the following named children of Elton F. Porton for their pecuniary loss, if any, resulting from his death?

Consider the following elements and none other: care, maintenance, support, services, education, advice, counsel and contributions of pecuniary value that such children would in reasonable probability have received from him during his lifetime had he lived.

Answer in dollars and cents, if any, with respect to each.

Answer: To Michael Elton Porton -0-  
 To Susan Carol Porton \$30,000  
 To Jeffery Taylor Porton \$30,000

#### SPECIAL ISSUE NO. 9:

What sum of money, if any, if paid now cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the parents of Elton F. Porton for their pecuniary loss, if any, resulting from his death?

Consider the following elements and none other: care, maintenance, support, services, advice, counsel and contributions of pecuniary value that such parents would in reasonable probability have received from him during his lifetime had he lived.

Answer in dollars and cents, if any, with respect to each.

Answer: To Harve Porton \$15,000  
 To Verda Ola Porton \$15,000

## SPECIAL ISSUE NO. 10:

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Naomi Lawallen for her pecuniary loss, if any, resulting from the death of Jesse Lee Lewallen?

Consider the following elements and none other: care, maintenance, support, services, advice, counsel and contributions of pecuniary value that Naomi Lewallen would in reasonable probability have received from Jesse Lee Lewallen during his lifetime had he lived.

Answer in dollars and cents, if any.

Answer: \$350,000

## SPECIAL ISSUE NO. 11:

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the following named children of Jesse Lee Lewallen for their pecuniary loss, if any, resulting from his death?

Consider the following elements and none other: care, maintenance, support, services, education, advice, counsel and contributions of pecuniary value that such children would in reasonable probability have received from him during his lifetime had he lived.

Answer in dollars and cents, if any, with respect to each.

Answer: To Gary Lewallen \$30,000  
 To Ginger Lewallen \$30,000  
 To Glenda Lackland -0-  
 To Glen Lewallen -0-  
 To Gay Smith -0-

## SPECIAL ISSUE NO. 12:

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate Louise C. Moore for her pecuniary loss, if any, resulting from the death of Leonard F. Moore?

Consider the following elements and none other: care, maintenance, support, services, advice, counsel and contributions of pecuniary value that Louise C. Moore would

in reasonable probability have received from Leonard F. Moore during his lifetime had he lived.

Answer in dollars and cents, if any.

Answer: \$300,000

**SPECIAL ISSUE NO. 13:**

What sum of money, if any, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate the following named children of Leonard F. Moore for their pecuniary loss, if any, resulting from his death?

Consider the following elements and none other, care, maintenance, support, services, education, advice, counsel and contributions of pecuniary value that such children would in reasonable probability have received from him during his lifetime had he lived.

Answer in dollars and cents, if any, with respect to each.

Answer: To Stanley C. Moore -0-  
To Susan C. Moore -0-

We, the jury, have answered the above and foregoing special issues as herein indicated, and herewith return the same into court as our verdict.

The aforesaid answers and verdict of the Jury were duly received by the Court, the Jury was polled by the Court and acknowledged the verdict and upon motion it was ordered that the verdict be filed and it was so filed. Based upon such verdict, and after motions duly made for judgment, and the Court having denied defendant, Helicol's Motion for Judgment Non Obstante Veredicto, the Court finds that judgment should be entered as follows:

It is ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Elizabeth Hall, do have and recover of and from the defendant, Helicol, THREE HUNDRED THOUSAND DOLLARS (\$300,000), plus reasonable funeral expenses of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500), together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that minor plaintiff, Delbert Hall, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS (\$30,000), which sum, following the deduction of attorneys' fees, shall be paid into the Registry of the Court or shall be deposited in a proper savings institution until he reaches his majority or until such further Order of this Court, together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Susan Carol Porton, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS, together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that minor plaintiff, Jeffery Taylor Porton, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS (\$30,000) which sum, following the deduction of attorneys' fees, shall be paid into the Registry of the Court or shall be deposited in a proper savings institution until he reaches his majority or until such further Order of this Court, together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiffs, Harve Porton and Verda Ola Porton, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS (\$30,000) being \$15,000 for Harve Porton and \$15,000 for Verda Ola Porton, plus reasonable funeral expenses in the amount of THREE THOUSAND ONE HUNDRED DOLLARS (\$3,100), together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Naomi Lewallen, do have and recover of and from the defendant, Helicol, THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000), plus reasonable funeral expenses in

the amount of THREE THOUSAND ONE HUNDRED DOLLARS (\$3,100), together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Gary Lewallen, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS (\$30,000) together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that minor plaintiff, Ginger Lewallen, do have and recover of and from the defendant, Helicol, THIRTY THOUSAND DOLLARS (\$30,000), which sum, following the deduction of attorneys' fees, shall be paid into the Registry of the Court or shall be deposited in a proper savings institution until she reaches her majority or until such further Order of this Court, together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED by the Court that plaintiff, Louise C. Moore, do have and recover of and from the defendant, Helicol, THREE HUNDRED THOUSAND DOLLARS (\$300,000), together with reasonable funeral expenses in the amount of Two THOUSAND FIVE HUNDRED DOLLARS (\$2,500), together with interest thereon at nine per cent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED that cross-plaintiff, Williams-Sedco-Horn, do have and recover of and from the defendant, Helicol, SEVENTY THOUSAND DOLLARS (\$70,000), which Williams-Sedco-Horn and Helicol have stipulated in open court to be the reasonable amount of Williams-Sedco-Horn's attorney's fees and expenses in connection herewith, with interest thereupon at nine percent (9%) per annum from this date until paid.

It is further ORDERED, ADJUDGED AND DECREED that any relief not expressly granted by this judgment is denied and that all cross-plaintiffs (save and except Williams-Sedco-Horn

in its cross-action against Helicol) having filed cross-actions herein, take nothing from the cross-defendants in those respective cross-actions, with the costs of said cross-actions being borne by those parties who filed them.

Wherefore, on the basis of the damages as found in the verdict of the Jury and those stipulated by the parties, it is ORDERED, ADJUDGED AND DECREED that the plaintiffs have judgment against Helicol in the total amount of ONE MILLION ONE HUNDRED THIRTY THOUSAND DOLLARS (\$1,130,000), plus reasonable funeral expenses in the total amount of ELEVEN THOUSAND TWO HUNDRED DOLLARS (\$11,200), together with interest thereon at nine per cent (9%) per annum from this date until paid, and for all costs of Court incurred in this cause, and that Williams-Sedco-Horn have judgment against Helicol in the total amount of SEVENTY THOUSAND DOLLARS (\$70,000), together with interest thereon at nine per cent (9%) per annum from this date until paid and for the costs incurred in connection with its cross-action against Helicol.

JUDGMENT SIGNED on this 7th day of July, 1980.

/s/ Wyatt H. Heard  
WYATT H. HEARD, JUDGE



COURT OF CIVIL APPEALS OF TEXAS, HOUSTON  
(1st Dist.)

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No. 17882

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HELICOPTEROS NACIONALES DE COLOMBIA, S.A.  
("HELICOL"),

*Appellant,*

v.

ELIZABETH HALL, *et al.*,

*Appellees.*

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**Appeal From The District Court Of Harris County**

This is an appeal from a money judgment awarded to appellees in a wrongful death action arising out of a helicopter crash in Peru, South America. Specifically, Helicopteros Nacionales De Colombia, S.A. (Helicol) is appealing from an order overruling its special appearance pursuant to Rule 120a, T.R.C.P.

We reverse and order the case dismissed.

Helicol, South American, corporation with its residence in Colombia, was sued by the appellees, survivors of four men killed in a helicopter accident which occurred in the jungles of Peru in January, 1976. Service was had upon Helicol under the "long-arm" statute, Tex. Rev. Civ. Stat. Ann., art. 2031b.

Although the actions by the survivors of the four men were filed separately, the four cases ultimately were consolidated for all purposes. Prior to consolidation, however, the special appearance pursuant to Rule 120a was timely filed in each of the causes. Pursuant to an agreement between counsel for Helicol and counsel for appellees, a special appearance hearing was conducted with testimony presented and evidence admitted in only one of the cases. It was agreed by the attorneys for all the parties that the testimony and evidence presented during that special appearance hearing would be filed and used as



the testimony and the evidence presented by the parties in each of those cases. The courts in all four cases honored those agreements and after considering the testimony and the evidence, overruled the special appearances filed by Helicol. The transcribed testimony and attached exhibits which have been filed with this court on appeal are the same transcribed testimony and exhibits considered by the trial court in all four cases. A motion for reconsideration of the overruling of Helicol's special appearance was filed and also overruled. The case proceeded to a jury trial on the merits. A verdict was returned against Helicol and appellees were jointly awarded \$1,141,200, together with post-judgment interest.

We are not here concerned with the record in this case as it relates to the verdict and judgment. Our sole concern is whether or not the evidence adduced at the special appearance hearing supports the overruling of Helicol's special appearance.

The appellant asserts two points of error, the first of which avers that the court erred in overruling the special appearance of Helicol because Helicol, a South American corporation, was not doing business in Texas and did not otherwise engage in acts which come within the purview of art. 2031b. By point of error two, Helicol complains that the trial court erred in overruling the Rule 120a special appearance of Helicol because Helicol, a foreign corporation, did not have sufficient contacts with Texas to meet the requirements of the constitutional minimum contacts test so that the exercise of *in personam* jurisdiction over Helicol offended the traditional notions of fair play and substantial justice as set out by the Fourteenth Amendment of the U.S. Constitution.

Pursuant to Rule 120a, a defendant may file a special appearance and if such appearance is overruled, the defendant may then enter a general appearance. By entering the general appearance, the defendant does not waive the right to appeal the denial of its special appearance. Rule 120a, T.R.C.P.

Originally, appellees attempted to serve Helicol by serving a sister subsidiary of Helicol, Avianca, Inc., a New York corporation authorized to do business in Texas. It was undisputed that while both subsidiaries are owned by Aerovias Nacionales De Colombia, S.A., that they have no mutual business connections. In *Gentry v. Credit Plan Corporation of Houston*, 528 S.W.2d 571 (Tex. 1975), the court held that a subsidiary will not be responsible for the acts of a parent except "where the management and operations are assimilated to the extent that the subsidiary is simply a name or conduit through which the parent conducts its business." The evidence in the case shows Helicol is not a part of Avianca, Inc. and therefore jurisdiction cannot be maintained over Helicol by serving Avianca, Inc.

Appellees next sought to maintain jurisdiction over Helicol pursuant to art. 2031b. Article 2031b provides in pertinent part:

Sec. 3. Any foreign corporation . . . that engages in business in this State . . . and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to appointment by such foreign corporations . . . of the Secretary of State of Texas as an agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation . . . is a party or is to be made a party.

Sec. 4. For the purposes of this Act, and without including other acts that may constitute doing business, any foreign corporation, . . . shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located inside or outside Texas shall be deemed doing business in this State.

In order to maintain jurisdiction over Helicol, it must be shown that it either committed a tort in Texas or entered into a contract to be performed in whole or in part in Texas. The undisputed evidence shows that the helicopter crash occurred in the jungles of Peru. Clearly, Helicol did not commit a tort in whole or in part in Texas, and thus the tort requirements of art. 2031b are not met. The record is in dispute as to whether Helicol entered into a contract to be performed in whole or in part by either party in Texas.

The facts in this case show that a joint venture known as Williams-Sedco-Horn (WSH) contracted with Helicol to furnish helicopter transportation service in connection with the construction of a pipeline in Peru. WSH employed the four men who died in the helicopter crash. There was never a contract between Helicol and appellees and Helicol's services were to be provided only in Peru.

A dispute arises in the evidence as to whether the contract between WSH and appellants was negotiated in Texas, Oklahoma or Peru. Helicol introduced testimony to show the contract was negotiated in Oklahoma; the parties discussed the amount and size of equipment in Houston, Texas, and that it was finalized, written and executed in Spanish in Peru. Helicol also showed that the contract required final approval from the Peruvian government. Payment for Helicol's services was invoiced in Peru and then American dollars were to be deposited in bank accounts in Panama and New York City. It is undisputed that the money came from a Texas bank where WSH had an account. Helicol did not have any bank accounts in Texas. The following testimony was offered by Mr. Restrepo, called by Helicol:

Q: The contract that was entered into by Helicol with Williams-Sedco-Horn for the transportation that was involved in this accident, was that contract negotiated or signed in the United States?

A: No, sir.

Q: Where was it signed, sir?

A: Lima.

Q: That's Lima, Peru?

A: Yes.

Q: Where was this signed and executed?

A: In Lima, Peru.

Q: This contract, Mr. Restrepo, why was it executed for Helicol by a lawyer in Peru, can you tell the Court that?

A: Because it has to be done according to the Peruvian laws.

Q: The contract had to be executed in accordance with Peruvian laws, is that what you said?

A: Yes.

Q: Which Peruvian governmental agency handled the contractual negotiations?

A: The Peruvian Air Force.

Q: Did they participate in the writing of the contract?

A: Yes, they have to approve the contract.

Q: So the contract even had to be printed on official papers of Peru?

A: Yes, sir.

Q: Just to make it perfectly clear, Mr. Restrepo, this contract was not executed in the United States, is that right, sir?

A: No.

Q: He (Novak) testified in his deposition that you made the deal down here in Houston, that is where you entered into the agreement for Helicol to provide the helicopter services, is that right?

A: They called me to discuss the amount and the size of the helicopter, but the deal was already done, like I said, in Peru.

Further, the entire discussion of the jurisdiction question seems to be answered by paragraph 19 of the contract, which states that all parties agree that Lima, Peru, is the residence

for all related to the contract and that the parties submitted to the jurisdiction of Peru.

Appellees contend that the contract was to be performed in part in Texas because of a provision therein, "that payment must be paid by the main office . . ." of WSH. However, even if WSH's main office were in Houston, the contract directed that the payments be made to Helicol's accounts in New York or Panama City. Nor can we determine that the place of payment in the contract had any significant bearing on the parties' contractual relations. What difference could it have made with either party if the payments were made from Texas, California or wherever so long as they were in fact made? Consider the consequences of WSH's moving its "main office" to Mexico or elsewhere in the world. Would appellees then contend that such other places would be where the contract was to be partially performed? We conclude that such provision for payment "by the main office" could only mean that WSH was free to make the payments due to Helicol from wherever it chose.

There seems to be absolute agreement by the courts, state and federal, that before a non-resident defendant can be made to answer to the jurisdiction of Texas under its "long-arm" statute, it must be shown that such defendant is susceptible to the threefold "minimum contacts" and "fair play" tests for jurisdiction as set forth in *O'Brien v. Lanpar*, 399 S.W.2d 340 (Tex. 1966) and affirmed in the recent Texas Supreme Court case of *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760, 762 (Tex. 1977):

- 1) The non-resident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
- 2) The cause of action must arise from, or be connected with, such act or transaction; and
- 3) The assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature and extent of the activity in the forum state, the relative convenience of the parties, the benefits and

protection of the forum state afforded the respective parties, and the basic equities of the situation. Id. 399 S.W.2d at 342.

The evidence before us fails to show that any of the foregoing requirements was met so as to give Texas jurisdiction of appellees' causes of action.

In a very similar fact situation involving a fatal helicopter crash off the coast of Ghana, Africa, Judge Seals in *Reich v. Signal Oil and Gas Company*, 409 F. Supp. 846 (S.D.Tex.1974) aff'd mem. 530 F.2d 974 (5th Cir. 1976), gives an exhaustive analysis of the requirements and the cases involving the Texas "long-arm" statute. In *Reich*, the plaintiffs sought to establish "doing business" in Texas by showing that the helicopter in question was manufactured in Italy by Agusta and leased to defendant Bristow, a British corporation, pursuant to a licensing agreement with Agusta. The helicopter was manufactured by Agusta according to a design owned by Bell Helicopter Co., a corporation doing business in Texas. The helicopter was never in Texas. The plaintiffs claimed jurisdiction in Texas because Bristow had "numerous and substantial business contacts in Texas" and Agusta had entered into a licensing contract in Texas. In holding that the plaintiffs had not met their burden as required by art. 2031b, the court stated:

However, assuming arguendo that Agusta's Licensing Agreement was entered into in Texas, Plaintiffs have not alleged a contract cause of action, and this court has found no authority to support the thesis that one who is neither a party nor a third-party beneficiary to a contract may raise the contract for the purpose of establishing jurisdiction over a nonresident defendant. (citation omitted) But even if there were such a principle of law it is the opinion of this Court that under the facts of this case the Licensing Agreement would be insufficient to support a finding of jurisdiction. The mere fact of the existence of a contract possibly entered into in Texas does not provide jurisdiction in and of itself. The same basic factors of jurisdiction under the letter of the state statute and under the requirements of constitutional due process still obtain.

In the *U-Anchor* case, *supra*, the court observed that the Texas "long-arm" statute may reach only as far as the federal constitutional requirements of due process will permit and denied the Texas court jurisdiction over Burt, a nonresident. The basis of such denial was that Burt's contacts with Texas were minimal and fortuitous and that he had not "purposefully" carried on any activities within the state.

The facts before us are even stronger relative to Helicol's contacts with Texas. Helicol has neither offices, business records, employees, property, bank accounts nor a telephone number in Texas. It does not conduct business, advertise, nor perform any helicopter operations in Texas. It has never had a Texas charter nor has it ever had a contract to perform any work in Texas. Helicol's operations are based solely in South America. It is difficult to conclude that Helicol had any expectation of availing itself of the benefits and protections of the law of the state of Texas. We can find no indication that Helicol intended to make a profit from any business deal undertaken in Texas. *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974).

Appellees' arguments, that "fair play" and "substantial justice" would best be served by requiring Helicol to appear before a court in Texas, are not persuasive. The persons killed in the helicopter crash were residents of Oklahoma, Illinois, Arizona and South America. None of them or their representatives had any contacts with Texas. The contract between Helicol and WHS specifically provided that all parties thereto were to be subject to the forum and laws of Peru. Clearly then, Texas has no special interest in the suit arising between parties to the contract who had already committed themselves to be bound by Peruvian law.

Appellees have failed to show that Helicol had sufficient minimum contacts with Texas as would invoke the contract, tort or fair play requirements of the Texas "long-arm" statute.

We have considered appellees' contention that Helicol's action in filing a suit against Bell Helicopter Company con-



stituted a submission by Helicol to the jurisdiction of Texas. We do not agree that this is true. When Helicol filed its suit against Bell, Bell moved for and was granted a consolidation. Helicol's action, being a mandatory cross-claim under art. 2212a(2)(g), Tex. Rev. Civ. Stat. Ann., was required to be filed in the primary suit or lost. Helicol's right to relief against Bell had already been established when the primary suit was filed.

The judgments of the trial courts in overruling Helicol's special appearance are reversed; judgment is rendered granting Helicol's Rule 120a special appearance; and this case is ordered dismissed for lack of jurisdiction.

/s/ Henry E. Doyle  
HENRY E. DOYLE  
Associate Justice

Associate Justices Warren and Evans also sitting.

Judgment rendered and opinion filed January 22, 1981.



IN THE SUPREME COURT OF TEXAS

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No. C-243

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ELIZABETH HALL, *et al.*,

*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.  
("HELICOL"),

*Respondent.*

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FROM HARRIS COUNTY FIRST DISTRICT

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ON MOTION FOR REHEARING

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*Our opinion of February 24, 1982, is withdrawn and this opinion is substituted therefor.*

Elizabeth Hall and the other plaintiffs in the trial court (Hall) are the survivors of four citizens of the United States killed in a helicopter crash in Peru while working in that country constructing a pipeline. Hall sued Helicol, the owner and operator of the helicopter which crashed, in Harris County, Texas, in four separate causes of action. Helicol entered a special appearance in each of the actions, to contest the jurisdiction of the Texas court pursuant to Rule 120a, TEX. R. CIV. P., all of which were overruled by the respective trial courts. The four actions were consolidated for trial resulting in a judgment for Hall. The court of civil appeals reversed the judgment of the trial court and ordered the case dismissed for lack of jurisdiction. 616 S.W.2d 247. We reverse the judgment of the court of civil appeals and affirm the judgment of the trial court.

The only issue before us is whether under the facts of this cause of action, was Helicol amenable to jurisdiction in Texas. Therefore, this Court must decide whether the trial court's

exercise of jurisdiction over Helicol was consistent with the requirements of due process of law under the Constitution of the United States.

In 1974, Petro Peru, the Peruvian state owned oil company, made a contract with Williams-Sedco-Horn,<sup>1</sup> (referred to as Consorcio in their contract), a joint venture based in Houston, Texas, to construct a pipeline from the interior of Peru to the Pacific Ocean. The defendant, Helicol, was brought into the project by Williams-Sedco-Horn to provide necessary transportation of workers and supplies, by helicopter, to regions where there were no roads. Helicol was originally contacted by a Williams executive who had contracted with Helicol in the past. In response to that contact, the general manager of Helicol flew to Oklahoma, and then proceeded to Houston, Texas to negotiate with the three members of the joint venture. After reaching agreement on all terms of the contract in Houston, those terms were related to Helicol's office in Peru. The contract in its final form was approved by the Peruvian Air Force as required by Peruvian law, typed in Spanish and executed by representatives of all parties in Peru. Helicol did not maintain an office in Texas, had no designated agent for service of process in Texas, was not authorized to do business in Texas, performed no helicopter operations in Texas, and did not recruit employees in Texas.

The deceased workers here in question, were not Texas residents, but were all United States citizens. They were hired by Williams-Sedco-Horn, in Houston, Texas, and sent to Peru to work on the pipeline. The workers were killed in the crash of a Bell helicopter, owned and operated by Helicol in Peru, during their transportation pursuant to the contract between Helicol and Williams-Sedco-Horn.

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<sup>1</sup> Williams-Sedco-Horn is a joint venture composed of Williams International Sundamericana, Ltd., a Delaware corporation headquartered in Tulsa, Oklahoma, Sedco Construction Corporation, a Texas corporation, and Horn International, Inc., a Texas corporation.

In addition to negotiating this contract, Helicol committed all of the following acts in Texas:

- a. Purchased substantially all of its helicopter fleet in Fort Worth, Texas;
- b. Did approximately \$4,000,000 worth of business in Fort Worth, Texas, from 1970 through 1976 as purchaser of equipment, parts and services. This consisted of spending an average of \$50,000 per month with Bell Helicopter Company, a Texas corporation;
- c. Negotiated in Houston, Harris County, Texas, with a Texas resident, which negotiation resulted in the contract to provide the helicopter service involving the crash leading to this cause of action (previously mentioned), and wherein Helicol agreed to obtain liability insurance payable in American dollars to cover a claim such as this;
- d. Sent pilots to Fort Worth, Texas to pick up helicopters as they were purchased from Bell Helicopter and fly them from Fort Worth to Colombia;
- e. Sent maintenance personnel and pilots to Texas to be trained;
- f. Had employees in Texas on a year-round rotation basis;
- g. Received roughly \$5,000,000 under the terms and provisions of the contract in question here which payments were made from First City National Bank in Houston, Texas; and
- h. Directed the First City National Bank of Houston, Texas to make payments to Rocky Mountain Helicopters pursuant to the contract in question. (Involved leasing of a large helicopter capable of moving heavier loads for Williams-Sedco-Horn.)

We hold that these contacts constitute sufficient minimum contacts to find Helicol amenable to the jurisdiction of the Texas courts.

In their briefs before this Court, all parties agreed that our opinion in *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex. 1977) controlled the disposition of this case.

In *U-Anchor*, we stated:

Article 2031b provides that a nonresident entering into a contract with a Texas resident performable in part by either party in Texas shall be deemed to be doing business in Texas. . . . We agree that in this respect, as well as with the respect to 'other acts that may constitute doing business,' Article 2031b reaches as far as the federal constitutional requirements of due process will permit. We let stand the statement in *Hoppenfeld v. Crook*, 498 S.W.2d 52 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.) 'that the reach of Art. 2031b is limited only by the United States Constitution.' . . . Furthermore, such a construction is desirable in that it allows the courts to focus on the constitutional limitations of due process rather than to engage in technical and abstruse attempts to consistently define 'doing business.'

In the *U-Anchor* opinion we specifically adopted the above language from *Hoppenfeld*. Also, in *U-Anchor*, this Court approved the three-prong test set out in *O'Brien v. Lanpar Company*, 399 S.W.2d 340 (Tex. 1966). That three-prong test is:

- (1) the nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
- (2) the cause of action must arise from, or be connected with, such act or transaction; and
- (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice; consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

The second prong of the *O'Brien* test requiring that the cause of action must arise out of the contacts with the forum state, has been the subject of some controversy ever since the *O'Brien* test was adopted. The second prong is useful in any

fact situation in which a jurisdiction question exists; and is a necessary requirement where the nonresident defendant only maintained single or few contacts with the forum. However, the second prong is unnecessary when the nonresident defendant's presence in the forum through numerous contacts is of such a nature, as in this case, so as to satisfy the demands of the ultimate test of due process. Accordingly through the statutory authority of Art. 2031b TEX. REV. CIV. STAT. ANN. there remains the single inquiry: is the exercise of jurisdiction consistent with the requirements of due process of law under the United States Constitution? This inquiry is frequently put into the following terms: "... due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945), quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940).

The U.S. Supreme Court has broadened the parameters of due process to allow inquiry into other "relevant factors." Recently in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the Supreme Court reiterated that the relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." Citing, *International Shoe*, supra. In looking to this reasonableness, the U.S. Court stated that the burden on the defendant:

. . . while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223, 2 L.Ed.2d 223, 78 S.Ct. 199 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko v. California Superior Court*, [436 U.S.] at 92, 56 L.Ed.2d 132, 98 S.Ct. 1690, at least when that interest is not adequately protected by the plaintiff's pow-

er to choose the forum, c.f. *Shaffer v. Heitner*, 433 U.S. 186, 211 n. 37, 53 L.Ed.2d 683, 97 S.Ct. 2569 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko v. California Superior Court*, supra, at 93, 98, 56 L.Ed.2d 132, 98 S.Ct. 1690.

*Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. at 291. Therefore, our inquiry can go beyond the substantial contacts which Helicol maintains in Texas, and we may also look to this State's interest in adjudicating the dispute; and Hall's interest in effective and convenient relief.

Texas has an interest in adjudicating this dispute. Hall is not a Texas resident, but is a citizen of this country. More importantly, Hall was hired in Houston, Texas, by a Texas resident. It cannot be questioned that this forum has an interest in protecting the employees of its "residents" (Williams-Sedco-Horn). This is especially necessary in light of the fact that Texas is the headquarters of countless international companies, and as a member of the "interstate judicial system," this State has an interest in obtaining the most efficient resolution of controversies and in furthering fundamental substantive social policies. (See above quote, citing *Kulko v. California Superior Court*, supra.)

Hall has a genuine interest and desire in obtaining convenient and effective relief. The U.S. Supreme Court directly considered the plaintiff's interest involved in *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957). In *McGee*, a California resident was suing a Texas insurance company as a beneficiary under a life insurance policy. The defendant's only contact with California had been its mailing of the policy to the state, and its receipt of premium payments from the decedent. The U.S. Supreme Court addressed the relative convenience of the parties and based their decision allowing maintenance of the suit in California on the State's interest in providing effective redress, and the fact that an individual claimant could not overcome the difficulties of maintaining an action in a foreign forum "... thus in effect making the company judgment

proof." 355 U.S. at 223. The Court did recognize the inconvenience that this worked on the defendant, but based on the contacts of the defendant, due process would not be offended. Admittedly this cause does not fall precisely within the facts of *McGee*, it does fall within its spirit.

Based on the considerations of the above discussion and looking to the requirements of the *U-Anchor* test, we find that Helicol's numerous and substantial contacts do constitute "doing business" in this State and the trial court's actions do not offend due process.

The judgment of the court of civil appeals is reversed and the judgment of the trial court is affirmed.

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/s/ JAMES P. WALLACE  
Justice

Concurring opinion by Justice Campbell in which Justice McGee joins. Dissenting opinion by Justice Pope in which Chief Justice Greenhill and Justice Barrow join.

OPINION DELIVERED: July 21, 1982

IN THE SUPREME COURT OF TEXAS

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No. C-243

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ELIZABETH HALL, *et al.*,

*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.  
("HELICOL"),

*Respondent.*

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FROM HARRIS COUNTY FIRST DISTRICT

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ON MOTION FOR REHEARING  
CONCURRING OPINION

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I concur with the result of the opinion by Justice Wallace for these additional reasons.

The issue in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), was "whether, consistently with the due process clause of the Fourteenth Amendment, an Oklahoma court may exercise in personam jurisdiction over a non-resident automobile retailer and its wholesale distributor in a products liability action, when the defendants' only connection with Oklahoma is the fact that an automobile sold in New York to New York residents became involved in an automobile accident in Oklahoma." *Id.* at 287. The question before this Court is whether, consistently with the due process clause of the Fourteenth Amendment, a Texas court may exercise in personam jurisdiction over a non-resident provider of helicopter services, when the defendant's connections with Texas were all of those listed in the opinion by Justice Wallace.

In *World-Wide*, there was no evidence that World-Wide or its retail distributor, Seaway, did any business in Oklahoma,



shipped or sold any products to or in that state, had an agent to receive process there, or purchased advertisements in any media calculated to reach Oklahoma. During oral arguments before the U.S. Supreme Court, plaintiffs attorney conceded there was no showing that any automobile ever sold by World-Wide or Seaway had ever entered Oklahoma with the single exception of the car involved. *Id.* at 289. Thus, *World-Wide* holds that driving a car through a state is not such "minimum contacts" to give that state jurisdiction in an action against a New York seller.

In reaching this decision, the U.S. Supreme Court stated:

Petitioners carry on no activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the state. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly through others, serve or seek to serve the Oklahoma market. In short, respondents seek to base jurisdiction on one isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.

444 U.S. at 295.

Applying that same language to the facts of this case, I would write: Helicol carries on much business in Texas. They close many purchases of helicopters and spare parts and negotiate contracts in Texas. They regularly secure the services of Bell Helicopter in training their pilots and repair technicians. They solicited business in Texas by sending a representative to Houston to negotiate with Williams-Sedco-Horn. The record shows they regularly buy helicopters and spare parts in Texas and seek Texas services for training their employees. They directly secure the services of the Texas markets, maintain employees in Texas on a year-round basis and 26 times sent officials of their company to Texas. This activity has continued

since 1970. In this multi-million dollar business in Texas, Helicol has availed itself of the privileges and benefits of Texas law. In short, our petitioners seek to base jurisdiction on many significant contacts in Texas that reflect a continuous general presence in Texas.

The U.S. Supreme Court, in *World-Wide*, was addressing the jurisdictional problem between states. However, we do not have the same problem as *World-Wide*. We do not have a dispute over jurisdiction between coequal sovereigns in a federal system. We are deciding jurisdiction between countries; as to citizens of the United States and a resident of Colombia. Therefore, our "due process" application must be broader in scope.<sup>1</sup>

Now, let us look at what *World-Wide* said about "minimum contacts" and reasonableness of the "forum" among the states, and apply those tests to our facts:

The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their statutes as coequal sovereigns in a federal system.

The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness." We have said that the defendant's contacts with the forum State must be such that maintenance of the suit "does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, [326 U.S.] at 316, 90 L. Ed. 95, 66 S. Ct. 154, 161 A.L.R. 1057, quoting *Miliken v. Meyer*, 311 U.S. 457, 463, 85 L. Ed.

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<sup>1</sup> On September 17, 1982, after Helicol's motion for rehearing was filed, the Clerk of the Court advised West Publishing Company by letter that the language: "Therefore, our 'due process' application must be broader in scope" was removed from the opinion and the following language was substituted: "Therefore 'due process' in this case must be universal in its application."

278, 61 S. Ct. 339, 132 A.L.R. 1357 (1940). The relationship between the defendant and the forum must be such that it is "reasonable . . . to require the corporation to defend the particular suit which is brought there." 326 U.S. at 317, 90 L. Ed. 95, 66 S. Ct 154, 161 A.L.R. 1057. Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee v. International Life Ins. Co.* 355 U.S. 220, 223, 2 L. Ed.2d 223, 78 S. Ct. 199 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko v. California Superior Court*, [436 U.S.] at 92, 56 L. Ed. 2d 132, 98 S. Ct. 1690, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, cf. *Shaffer v. Heitner*, 433 U.S. 186, 211, n. 37, 53 L. Ed. 2d 683, 97 S. Ct. 2569 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko v. California Superior Court*, [436 U.S.] at 93, 98, 56 L. Ed. 2d 132, 98 S. Ct. 1690.

444 U.S. at 291-92.

The contacts of Helicol in Texas were not "minimal," they were "substantial." It is not unreasonable to require a company with the expertise in international business, as Helicol, to defend a suit in a state where it has conducted multi-million dollars of business. However, it is unreasonable to require the widows and children seeking relief here to go to a foreign country to prosecute their action.

This Court has an interest in adjudicating the dispute of these United States citizens. They do not have the power to select another state but must be removed to a foreign country. This Court has an interest in assuring these plaintiffs obtain convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum country.

"Due process" is not a rigid, unchanging rule that courts could always determine by an unchanging formula. The concept of "due process" is designed to meet the test of change and to protect the rights of American citizens in the 1980's, as it did when the Constitution was written. In *World-Wide*, it was stated:

The limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years. As we noted in *McGee v. International Life Ins. Co.*, supra, at 222-223, 2 L. Ed. 2d 223, 78 S. Ct. 199, this trend is largely attributable to a fundamental transformation in the American economy:

"Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity."

The historical developments noted in *McGee*, of course, have only accelerated in the generation since that case was decided.

444 U.S. at 292-93.

The quote from *McGee* is as applicable to the facts of this case as it was to the *McGee* facts. It could be written: Today many commercial transactions touch two or more countries and may involve parties separated by continents or oceans. With this increasing internationalization of commerce has come a great increase in the amount of business conducted by mail and satellite communications across continental lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a country where he engages in economic activity.

The *McGee* court further stated: "Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing

which amounts to a denial of due process." 355 U.S. at 224. In my opinion, the inconvenience to Helicol, considering their substantial contacts in Texas, is certainly nothing which amounts to a denial of due process.

In *Hanson v. Denckla*, 357 U.S. 235 (1958), the Supreme Court, in explaining the requirements of due process, stated:

The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but *it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.*

[Emphasis added].

357 U.S. at 253.

This Court, in *U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex.1977), tested the jurisdiction of Texas courts over the Oklahoma resident by stating:

[T]he contacts of Burt with Texas are minimal and fortuitous, and he cannot be said to have "purposefully" conducted activities within the State. Burt's contacts with Texas were not grounded on any expectation or necessity of invoking the benefits and protections of Texas law, nor were they designed to result in profit from a business transaction undertaken in Texas. The contract was solicited, negotiated, and consummated in Oklahoma, and Burt did nothing to indicate or to support an inference of any purpose to exercise the privilege of doing business in Texas. Simply stated, Burt was a passive customer of a Texas corporation who neither sought, initiated, nor profited from his single and fortuitous contact with Texas.

553 S.W.2d at 763.

Applying the *U-Anchor* test and using the *U-Anchor* language, I find Helicol's contacts are numerous and not fortuitous, as Helicol purposefully conducted activities within the state. Helicol's contacts with Texas were grounded on the

expectation, or necessity, of invoking the benefits and protections of Texas law; and they were designed to result in profit from a business transaction undertaken in Texas. The contracts and contacts were solicited or negotiated in Texas and some consummated in Texas. Helicol's activities, therefore, did more than indicate or support an inference of purposefully exercising the privilege of doing business in Texas. Helicol was an active customer of Texas corporation and companies who sought, initiated, and hopefully profited from its many and purposeful contacts with Texas.

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ROBERT M. CAMPBELL  
Justice

Justice McGee joins in this concurring opinion.

OPINION DELIVERED: July 21, 1982

IN THE SUPREME COURT OF TEXAS

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No. C-243

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ELIZABETH HALL, *et al.*,

*Petitioners,*

v.

HELICOPTEROS NACIONALES DE COLOMBIA, S.A.  
("HELICOL"),

*Respondent.*

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FROM HARRIS COUNTY, FIRST DISTRICT

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DISSENTING OPINION

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I respectfully dissent. The former dissenting opinion handed down July 21, 1982, is withdrawn. The survivors of four nonresidents who were killed in an airplane crash in the jungles of Peru, have sued the defendant Helicol in Houston, Texas. Helicol is a resident corporation of Colombia, South America. Neither the plaintiffs, the decedents, the defendant, nor the tort action have any connection with Texas. The court makes Texas the courthouse for the world, requiring only that the plaintiff show that the defendant had made purchases of supplies from some unrelated business located in Texas. I disagree with the court's opinion, because it is not grounded upon the correct facts and because our long-arm statute reaches only to "causes of action arising out of such business done in this State." TEX. REV. CIV. STAT. ANN. art. 2031b.

The court mistakenly says that Williams-Sedco-Horn, a Texas joint venture, was the party that contracted with the Peruvian owned oil company, Petro Peru. The opinion also says that the defendant Helicol negotiated and made its agreement with Williams-Sedco-Horn in Houston, Texas. The true

facts, as stated by the court of civil appeals are that Williams-Sedco-Horn was not the party who contracted either with the Peruvian oil company or with Helicol. The undisputed testimony was that Peru forbade a contract to construct the pipeline with any corporation unless it was a Peruvian company. The contract, written in Spanish and approved by the government, was with Peruvian-based Consorcio, not Williams-Sedco-Horn. The parties to the contract for the helicopters were Consorcio and Helicol. The court of civil appeals so found and enforced that finding by its further reference to paragraph 19 of the contract, which states, in the words of that court, "that all parties agree that Lima, Peru, is the residence for all related to the contract and that the parties submitted to the jurisdiction of Peru." The court of civil appeals made these other significant findings:

It [Helicol] does not conduct business, advertise, nor perform any helicopter operations in Texas. It has never had a Texas charter nor has it ever had a contract to perform any work in Texas. Helicol's operations are based solely in South America. It is difficult to conclude that Helicol had any expectation of availing itself of the benefits and protections of the law of the state of Texas. We can find no indication that Helicol intended to make a profit from any business deal undertaken in Texas. *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483 (5th Cir. 1974).

#### **Article 2031b Requires a Nexus to Business Done in This State.**

Article 2031b expressly requires a *nexus* between the helicopter crash and the contacts relied upon to justify jurisdiction. The nexus requirement in Texas is found in the clear wording of the statute itself. Section 3 of article 2031b provides:

Any foreign corporation, association, joint stock company, partnership, or non-resident natural person that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom



service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within the State shall be deemed equivalent to an appointment by such foreign corporation, joint stock company, association, partnership, on nonresident natural person of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party.

TEX. REV. CIV. STAT. ANN. art. 2031b, § 3 (emphasis added).<sup>1</sup>

Article 2031b was enacted in the wake of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), which greatly expanded the jurisdictional potential of the various states. The Supreme Court reasoned in *International Shoe* that the exercise of jurisdiction over a nonresident defendant satisfies due process when the defendant has had "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 316. This standard was broader in its effect than the "long-

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<sup>1</sup> Section 2 of article 2031b also requires a nexus, although this section was not the basis for exercise of jurisdiction in the present case. Section 2 provides:

When any foreign corporation, association, joint stock company, partnership, or non-resident natural person, though not required by any Statute of this State to designate or maintain an agent, shall engage in business in this State, in any action in which such corporation, joint stock company, association, partnership, or non-resident natural person is a party or is to be made a party arising out of such business, service may be made by serving a copy of the process with the person who, at the time of the service, is in charge of any business in which the defendant or defendants are engaged in this State, provided a copy of such process, together with notice of such service upon such person in charge of such business shall forthwith be sent to the defendant or to the defendant's principal place of business by registered mail, return receipt requested.

TEX. REV. CIV. STAT. ANN. art 2031b, § 2 (emphasis added).

arm" statutes then employed in most states, including Texas.<sup>2</sup> Most states, like Texas, responded to the action of the Supreme Court by enacting statutes aimed at taking advantage of the expanded limits of potential jurisdiction. While the reach of a particular statute could always be coextensive with constitutional confines outlined by the Supreme Court, states were not compelled to assert jurisdiction that far. See *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 440 (1952); *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260, 1264 (5th Cir. 1981). Some states took advantage of the full range of jurisdiction allowed. See, e.g., FLA. STAT. ANN. § 48.081(5) (allowing jurisdiction over unrelated causes of action when a foreign corporation has a "business office" in the state and engages in the transaction of business there); WIS. STAT. ANN. § 801.05(1) (jurisdiction over unrelated causes of action permitted when an individual carries on "substantial and not isolated activities" in the state). See also UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT § 1.02 (jurisdiction may be asserted as to unrelated causes of action when a defendant has his principal place of business in the state). Texas and other states wrote more restrictive stat-

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<sup>2</sup> Article 2031b became effective August 10, 1959. Prior to that time, Texas had no general jurisdictional statute. Instead, jurisdiction was based upon a nonresident motorist statute, TEX. REV. CIV. STAT. ANN. art. 2039a, and upon several statutes applying to nonresidents in specific circumstances, such as TEX. INS. CODE ANN. arts. 3.65, 3.66, 21.38 § 6; TEX. BUS. CORP. ACT ANN. arts. 2.11, 8.10; TEX. NON-PROFIT CORP. ACT ANN. art. 8.09; TEX. REV. CIV. STAT. ANN. arts. 2031, 2031a, 2032, 2033, 2033b. See Thode, *In Personam Jurisdiction; Article 2031b, The Texas "Long-Arm" Jurisdiction Statute; And the Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 TEXAS L. REV. 279, 304 n.165 (1964) [hereinafter cited as Thode].

utes. Texas included the requirement that the jurisdiction be limited to causes of action arising from local activity.<sup>3</sup>

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<sup>3</sup> The nexus requirement of article 2031b was contained in the original version of the act and has remained there unchanged since enactment. Comment, *The Texas Long-Arm Statute, Article 2031b: A New Process Is Due*, 30 Sw. L.J. 747, 747 (1976). The statute is thought to have been adapted from the 1947 Vermont "long-arm" statute, which also contains a nexus requirement. The pertinent portion of that statute provides:

If a foreign corporation makes a contract with a resident of Vermont to be performed in whole or in part by either party in Vermont, or if such foreign corporation commits a tort in whole or in part in Vermont against a resident of Vermont, such acts shall be deemed to be doing business in Vermont . . . and shall be deemed equivalent to the appointment . . . of the secretary of state of Vermont . . . to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings . . . arising from or growing out of such contract or tort . . .

VT. STAT. ANN. title 12, § 855, *quoted in* Thode, *supra* at 305 n.167 (emphasis added). Other statutes adopted with similar provisions include: ILL. REV. STAT. ch. 110, § 17(1); MD. ANN. CODE, Courts and Judicial Proceedings, § 6-103; N.Y. CIV. PRAC. LAW § 302; OHIO REV. CODE ANN. § 2307.382. *See also* Precision Polymers, Inc. v. Nelson, 512 P.2d 811, 813 (Okla. 1973) (construing OKLA. STAT. title 12, §§ 187, 1701.03):

Under the above holding if it does not appear from the record that plaintiff's cause of action arises out of or is based upon the same acts of defendant alleged to confer jurisdiction in personam of the defendant, plaintiff may not invoke the provisions of § 187, *supra*, to acquire jurisdiction of defendant. This holding is in harmony with the language of § 187, which limits its application "to any cause of action arising, or which shall have arisen, from doing any" of the acts therein enumerated.

The Oklahoma statute requires a nexus notwithstanding the fact that the act has been construed to extend to constitutional limits. *See* Roberts v. Jack Richards Aircraft Co., 536 P.2d 353, 355 (Okla. 1975).

Jurisdiction statutes express the limits of a state's interest, in acquiring jurisdiction over nonresident defendants.<sup>4</sup> Article 2031b limits Texas' interest, to suits arising out of acts done in this state.<sup>5</sup> A desire to gain jurisdiction over nonresidents for

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<sup>4</sup>The United States Supreme Court has frequently looked to jurisdiction statutes to determine the extent of a state's expressed interest in acquiring jurisdiction over a particular lawsuit. In *Hanson v. Denckla*, 357 U.S. 235, 252 (1958), the Court distinguished the previous case of *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957), by stating:

This case is . . . different from *McGee* in that there the State had enacted special legislation (Unauthorized Insurers Process Act) to exercise what *McGee* called its "manifest interest" in providing effective redress for citizens who had been injured by nonresidents engaged in an activity that the State treats as exceptional and subjects to special regulation. Cf. *Travelers Health Assn. v. Virginia*, 339 U.S. 643, 647-49; *Doherty & Co. v. Goodman*, 294 U.S. 623, 627; *Hess v. Pawloski*, 274 U.S. 352.

See also *Kulko v. California Superior Court*, 436 U.S. 84, 98 (1978) ("California has not attempted to assert any particularized interest in trying such cases in its courts by, e.g., enacting a special jurisdictional statute."); *Iowa Electric Light and Power Co. v. Atlas Corp.*, 603 F.2d 1301 (8th Cir. 1979); Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1341, 1345 (1980).

<sup>5</sup>This is another way of saying that the legislature has expressed an interest in providing a forum for state residents who are injured by activities of nonresidents performed within the state's boundaries, and to require that the nonresident bear the costs of injuries caused by their activities in the state. That these considerations were factors in the drafting of the provisions of article 2031b is reflected indirectly in one commentator's call for legislative action prior to the enactment of the statute. See Wilson, *In Personam Jurisdiction Over Non-Residents: An Invitation and a Proposal*, 9 BAYLOR L. REV. 363 (1957). The proposed draft of a statute included by Professor Wilson in his article contained a nexus requirement identical to the one found in article 2031b. This proposed draft is considered by some to have served as a model for the first five sections of the statute adopted by the legislature. Thode, *supra* at 303 n.151.

unrelated actions arising from activities outside the state is not reflected in the history of the statute or in the act's clear and unambiguous wording. Certainly, the legislature could have drafted the statute in language expressly extending its effect to the full extent permitted by the Constitution, as it did in TEX. FAM. CODE ANN. § 3.26 (permitting the exercise of jurisdiction over a nonresident respondent "if there is any basis consistent with the constitution of this state or the United States for the exercise of the personal jurisdiction"), or it could have left out the nexus requirement, as in TEX. BUS. CORP. ACT ANN. art. 8.10 (providing for service of process on foreign corporations authorized to transact business in the state). Absent such legislative action, however, we must enforce the clear provisions of article 2031b as presently written. See generally *Fox v. Burgess*, 157 Tex. 292, 297, 302 S.W.2d 405, 409 (1957); 2A SUTHERLAND ON STATUTORY CONSTRUCTION § 46.04 (4th ed. 1973).<sup>6</sup>

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<sup>6</sup> It has been contended that the statute, article 2031b, was originally enacted to extend Texas "long-arm" jurisdiction to the full limits allowed after *International Shoe*, and that, if constitutional limits were actually broader than the legislature then believed, or if those limits have since been expanded, the statute's scope should likewise be enlarged in order to reach to the maximum extent possible. This argument is defective, however, for several reasons. First, article 2031b was enacted *after* *Perkins v. Benguet Consolidated Mining Co.*, *supra*, which held that states could, in rare instances, exercise jurisdiction over unrelated causes of action. 342 U.S. at 445-47. Second, even assuming that article 2031b was initially intended to be coextensive with due process, and due process was at that time believed to always require a nexus, we cannot assume that the drafters would have extended the statute to constitutional limits had the true limits been known, or when the limits were expanded. Perhaps the legislature was willing to extend article 2031b to constitutional limits only so long as a nexus was required. Finally, statutes drafted and enacted in other states near the time that article

Two prior opinions by this court hold that the nexus was required and in both cases, it was present. In *O'Brien v. Lanpar Company*, 399 S.W.2d 340, 342 (Tex. 1966), we upheld an Illinois default judgment against O'Brien, a nonresident Texas corporation whose president went to Illinois and employed the plaintiff as its attorney. We then stated this three-prong requisite for jurisdiction over a nonresident:

\* \* \* Such would appear to be: (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.

*U-Anchor Advertising, Inc. v. Burt*, 553 S.W.2d 760 (Tex. 1977), was the next time this court wrote on this subject. U-Anchor, a Texas corporation, solicited a contract with defendant Burt in Oklahoma to place advertising displays at points along Oklahoma highways. Burt agreed to pay U-Anchor \$80.00 a month for 36 months and to make the payments at U-Anchor's office in Amarillo, Texas. We held that U-Anchor's cause of action against Burt satisfied the nexus required of article 2031b. We wrote that it was "connected with the contractual obligation assumed by Burt and partially performable in Texas." *Id.* at 762. We held, however, that Burt could not be sued in Texas because U-Anchor failed to satisfy

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2031b was written contained provisions authorizing the exercise of jurisdiction over unrelated causes of action in some cases, indicating that at least some legislatures had the idea that such an exercise of jurisdiction was constitutional. See, e.g., MD. ANN. CODE, Courts and Judicial Proceedings, § 6-102; WIS. STAT. ANN. § 801.05(1).

the first and third requirements of *O'Brien, supra* at 763. As to the first requirement, we held that Burt's contacts with Texas were not purposefully conducted activities within Texas. Concerning the third requirement, we held that Burt's mailing of checks for payment to U-Anchor in Amarillo was a minimal contact. In contrast with those few contacts, we wrote that the solicitation, negotiation and consummation of the contract in Oklahoma showed that Burt might reasonably expect enforcement to be governed by Oklahoma rather than Texas law.

There is more reason here than in *U-Anchor* to deny Texas jurisdiction. The four plaintiffs worked for Consorcio. The contract fixed jurisdiction in Peru. Billings for work had to be made by Helicol to Consorcio in Peru. In *U-Anchor*, we held that Burt was no more than a passive customer of a Texas corporation, in that instance, the very party who was sued. In this case, however, Helicol has been pulled from Peru to Texas because it has been a customer of Bell Helicopter in Fort Worth. It had transactions with a company that in no way was connected with this litigation. *U-Anchor* is no support for the majority opinion.

The majority opinion disregards the statutory requirement that suit may be brought against a foreign corporation "upon causes of action arising out of such business done in this State."

The construction of article 2031b, here urged, conforms to that of the Fifth Circuit in several recent decisions. In *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981), one defendant, Beech, had extensive contacts with Texas, all unrelated to the cause of action. These contacts were similar to Helicol's activities in Texas, but were much more extensive. For example, Beech entered into an \$11.1 million subcontract with Bell Helicopter in Fort Worth for the production of airframe assemblies, and had produced these for Bell continuously since 1967 under contracts exceeding \$72 million. *Id.* at 1270 n.19. In addition, Beech had two employees residing and conducting business in Texas. A local corporation wholly owned by the



defendant had sold and serviced aircraft manufactured by Beech. These contacts constituted "doing business" in Texas, but the court concluded that jurisdiction in Texas could not be asserted because the activities were unrelated to the cause sued upon. They did not have the "slightest causal relationship with the decedent's wrongful death." *Id.* at 1270.

In *Jim Fox Enterprises, Inc. v. Air France*, 664 F.2d 63 (5th Cir. 1981), the defendant, Air France, was doing "a thriving business in Texas." *Id.* at 65. It had a ticket office at Houston's Intercontinental Airport and a district sales office downtown. It listed six local telephone numbers in the Houston telephone directory, leased Texas real estate, employed Texas residents, and paid Texas employment and personal property taxes. Gross receipts from passenger ticket sales in Texas totalled in excess of \$59 million. Nevertheless, the court in *Jim Fox* recognized that article 2031b requires a nexus between the cause of action and the contacts with Texas, and that Air France's contacts, being unrelated to the cause of action, were insufficient to support jurisdiction.

In another case, *Placid Investments, Ltd. v. Girard Trust Bank*, 662 F.2d 1176 (5th Cir. 1981), it was undisputed that the defendant did business in Texas. As noted by the court, the defendant maintained bank accounts in Texas, owned Texas real estate, and received revenue from Texas sources. *Id.* at 1178. None of these contacts, however, "gave rise" to the cause of action. As a result, the Fifth Circuit concluded, the causal relationship or nexus requirement in article 2031b was not met, and jurisdiction could not be asserted.

### Due Process

When a defendant has established a general business presence in the state, characterized by "substantial and continuous activity," that state may take jurisdiction over the defendant for unrelated causes of action. *Perkins v. Benguet Consolidated Mining Co.*, *supra* at 438, 445, 448; *O'Neal v. Hicks Brokerage Co.*, 537 F.2d 1266, 1268 (4th Cir. 1976); *Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 585-86 (1st Cir.



1970); *W. H. Elliott & Sons Co. v. Nuodex Products Co.*, 243 F.2d 116, 122 (1st Cir.), *cert. denied*, 355 U.S. 823 (1957). See also R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 145 (2d ed. 1980); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35(3) (1971).<sup>7</sup>

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<sup>7</sup>The reason for placing emphasis upon contacts related to the cause of action has to do with the need to show a state interest in assuming jurisdiction over the nonresident defendant. As explained in *Curtis Publishing Co. v. Birdsong*, 360 F.2d 344, 346-47 (5th Cir. 1966): "There must be a rational nexus between the fundamental events giving rise to the cause of action and the forum State which gives that State sufficient interest in the litigation before it may constitutionally compel litigants to defend in a foreign forum."

The United States Supreme Court had made it clear that a state's interest in subjecting a nonresident to its judicial jurisdiction is a fundamental factor to be considered in cases of this kind. In *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), the interest of the state was obvious in that the suit was brought by the state itself, for unpaid taxes. In *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957), the validity of the exercise turned upon California's paramount interest in the litigation. The Court noted the state's manifest interest in protecting its residents, stating: "These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State." In *Hanson v. Denckla*, 357 U.S. 235, 251-52 (1958), the Court emphasized the *absence* of a substantial state interest, distinguishing *McGee*. The Court explained:

The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum State. In that respect, it differs from *McGee International Life Ins. Co.*, 355 U.S. 220, and the cases there cited. In *McGee*, the nonresident defendant solicited a reinsurance agreement with a resident of California. The offer was accepted in that State, and the insurance premiums were mailed from there until the insured's death. Noting the interest California has in providing effective redress for its residents when nonresident insurers refuse to pay claims on insurance they have solicited in that State, the Court upheld jurisdiction because the suit "was based on a contract which had substantial connection with that State." In contrast, this action involves the validity of an agreement that was entered without any connection with the forum State.

The term "substantial and continuous activity" has a distinct meaning when used in the context of due process. It suggests that the individual or corporate defendant is enough of an "insider" in the forum that he may be safely relegated to the state's political processes. Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 87 (1980). Achievement of such a position requires more of the defendant than "minimum contacts." Instead, the defendant must establish some close substantial connection with the state approaching the relationship between the state and its own residents.<sup>8</sup> It was upon such

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Contrary to this court's conclusion on rehearing that Texas has an interest in adjudicating this case because the plaintiffs are United States citizens, cases demonstrate that state interest in litigation is consistently derived from a state's desire to protect its own citizens and property and to effectuate its own regulatory policies. *See, e.g.,* Blount v. Peerless Chemicals, Inc., 316 F.2d 695, 697 (2d Cir.), *cert. denied*, 375 U.S. 831 (1963); *Compania de Astral v. Boston Metals Co.*, 205 Md. 237, 107 A.2d 357 (1954), *cert. denied*, 348 U.S. 943 (1955). *See also* Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 COLUM. L. REV. 1343, 1345 (1980).

<sup>8</sup> This relationship is most commonly characterized by the fact that the forum state is the habitual residence, place of incorporation, or principal place of business for the defendant. *See* Seymour v. Parke, Davis & Co., *supra* at 587: "If the plaintiff has some attachment to the forum, or if the defendant has adopted the state as one of its major places of business, we would have no question of the right of the state to subject the defendant to suit for unconnected causes of action." *See also* Hill, *Choice of Law and Jurisdiction in the Supreme Court*, 81 COLUM. L. REV. 960 (1981); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 35, comment e (1971): "The individual's activities in the State may . . . be so continuous and substantial as to justify the exercise of judicial jurisdiction over him as to causes of action arising from activities in other states. This is particularly likely to be true in a situation where the individual's principal place of business is in the State."

exception to the rule—the defendant's operating its corporate headquarters in the forum state—that the United States Supreme Court upheld the exercise of jurisdiction over an unrelated cause of action in *Perkins v. Benguet Consolidated Mining Co.*, *supra*.<sup>9</sup>

The court in this case has applied the "minimum contacts" standard. The error in this reasoning is that the nexus requirement is satisfied and becomes unnecessary, not upon a showing of "minimum contacts," but upon a demonstration of the defendant's *substantial* and *continuous* activity in the forum. Absent a showing of such activity, the nexus requirement becomes a highly significant factor. Texas should not assume jurisdiction over this case that involves nonresident plaintiffs and a nonresident defendant when the cause of action arises out of facts totally unrelated to the forum state.

A separate concurring opinion filed on rehearing contends that the "long arms" of state jurisdiction should extend more elastically when reaching for nonresident defendants who are citizens of other countries. While this argument may appeal to those who contend that noncitizens should receive less due process than United States citizens, *cf. Plyler v. Doe*, 50 U.S.L.W. 4650 (1982); *Truax v. Raich*, 239 U.S. 33 (1915), it is nevertheless inconsistent with the way due process has been applied in previous cases. Although such a contention is rarely raised, cases dealing with jurisdictional issues invariably apply the same due process standards to citizens and noncitizens alike. *See, e.g., Jim Fox Enterprises v. Air France*, 664 F.2d

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<sup>9</sup> *See Seymour v. Parke, Davis & Co.*, *supra* at 587 (limiting *Perkins* to its facts); Newton, *Conflict of Laws*, 34 Sw. L.J. 385, 394 (1980) ("The proper characterization of *Perkins* . . . is that it never offends traditional notions of fair play and substantial justice for a defendant to be sued in his own backyard, no matter where the cause of action arose.")

63 (5th Cir. 1981); *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260 (5th Cir. 1981); *Hutson v. Fehr Brothers, Inc.*, 584 F.2d 833 (8th Cir. 1978); *Honeywell, Inc. v. Metz Apparatwerke*, 509 F.2d 1137 (7th Cir. 1975); *Product Promotions, Inc. v. Cous-teau*, 495 F.2d 483 (5th Cir. 1974); *Bryant v. Finnish National Airline*, 15 N.Y.2d 426, 208 N.E.2d 439 (1965). See also A. EHRENZWEIG & E. JAYME, PRIVATE INTERNATIONAL LAW vol. II at 22 (1973) (neither party's citizenship affects an American court's jurisdiction).

The court has established Texas as a "magnet" forum, drawing to its courts the trial of any lawsuit involving a defendant who has ever made purchases in Texas.

I would affirm the court of civil appeals.

JACK POPE  
Justice

Chief Justice Greenhill and Justice Barrow join in this dissent.  
OPINION DELIVERED:  
October 6, 1982

SUPREME COURT OF THE UNITED STATES

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No. 82-1127

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HELICOPTEROS NACIONALES DE COLOMBIA, S.A.,  
*Petitioner,*

v.

ELIZABETH HALL, *et al.*,  
*Respondents.*

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ORDER ALLOWING CERTIORARI. Filed March 7, 1983.

The petition herein for a writ of certiorari to the *Supreme Court of Texas* is granted.

## CERTIFICATE OF SERVICE

I, Thomas J. Whalen, being over the age of 18 years and a member of the firm of Condon & Forsyth, hereby certify that I have this 12th day of May, 1983, served three copies of the foregoing Joint Appendix upon respondents Elizabeth Hall, *et al.*, the only parties required to be served, by mailing such copies to their attorney of record in a sealed envelope, first class postage prepaid, deposited at the United State Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C., and addressed as follows:

George Pletcher, Esq.  
Helm, Pletcher & Hogan  
2800 Two Houston Center  
Houston, Texas 77002

/s/ \_\_\_\_\_  
Thomas J. Whalen, Esq.